The Centre for Corporate Social Performance and Ethics

Faculty of Management
University of Toronto

Proceedings of the Conference

Strategies for Responsible Share Ownership:
Implications for Pension and other Investment Funds

University of Toronto December 7, 1990

Sponsored by:

The Centre for Corporate Social Performance and Ethics

and

The Taskforce on the Churches and Corporate Responsibility

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University of Toronto 7 December 1990
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Foreword

Leonard J. Brooks

"Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

For most of the twentieth century, "responsible share ownership" has meant the selection of investments which provide the best combination of high financial return and acceptable levels of risk. Shareholders usually left corporate policy and operating decisions to management. If shareholders became disenchanted with their investments, they 'walked' away by selling their shares or bonds and buying others. Perhaps the most apt description of this phase of owner-manager activity would be *Two Solitudes*.

During the 19805, however, conditions changed so that a passive owner-managers relationship to the point where many owners are making a conscious decision whether to continue a passive stance or to adopt a more active, involved role. This shift has taken place for several reasons including the recognition that several aspects of our quality-of-life rehire fast remedial action, and that corporations can and must play a leading role in these; that corporations can pursue social goods without damaging profitability, and may even enhance their financial return/risk relationship; that institutional vehicles such as pension funds and ethical-investment-oriented mutual funds exist through which management and directors can be successfully approached to recognize shareholder concerns; and that activist groups and pension funds have promoted several successful, laudatory influence attempts, both in Canada and the u.s. Indeed, seminal activities and impressive influence attempts are brought to mind by the mere mention of the likes of the Sullivan Principles, the Valdez Principles, the New York City Pension Funds, CALPERS (California Public Employees Retirement System), and the Task Force on Churches and Corporate Social Responsibility (TCCR). In many cases business executives have been willing recipients of active shareholder proposals and have often initiated significant programs such as the Imagine Campaign. With these changes in perspective, and the growing recognition of the power and propensity for active investors to urge action on the trustees of pension and other investment funds, the need became evident to provide a forum to review what was happening, and how it might be facilitated and reacted to, and what might be going to happen in the future. That need provided the impetus for the CCSPE and TCCR to organize the conference that spanned these proceedings.

On the following pages are to be found the conference schedule, information about the CCSPE and the TCCR, and the presentations made on December 7, 1990. Topics chosen for the sessions included the following useful foci for discussion and debate:

- The Bay Street Walk is not an Option. Why Investors Must Be Active Shareholders
- Legal Issues for Trustees and Managers
- Alternate Approaches to Management: Role of Members and Trustees
- Screening for Ethical Investment and Divestment
- Alternative Investment of Pension and Other Funds
- Shareholder Action: Recent Canadian and Global Experience

The blend of investment managers, activists, regulators, academics and shareholders provided thoughtful and spirited discussion which benefitted all concerned, and a better understanding with which to face new developments.

Responsible Share Ownership, it would appear, has an active future.

Leonard J. Brooks,
Moderator of the Conference

March 1991

Leonard J. Brooks
Professor of Business Ethics & Accounting
University of Toronto
Faculty of Management.

Conference Schedule

Introduction of Keynote Speakers by Conference Moderator: Len Brooks, Professor of Business Ethics and Accounting, Faculty of Management, University of Toronto

"The 'Bay Street Walk' Is Not an Option: Why Investors Must Be Active Shareholders"
Eric Wollman, Administrative Manager of the Proxy Unit, Bureau of Asset Management, City of New York, Office of the Comptroller

"Legal Issues for Trustees and Managers"
Edward J. Waitzer, Partner Stikeman, Elliott

"Social Responsibility and Corporate Governance: Current Issues"
A Panel Discussion:
- Tim Smith, ..."Issues for a Social Responsibility Agenda"
- Peter de Auer ....."An Institutional Investor's Response on Corporate Governance Issues"
- David Grier ....."A Corporate Response to Shareholder Action"

Luncheon Speaker
"Active Shareholdership: A Viable Strategy for Labour?"
Bob Baldwin, National Director Technical Services, Canadian Labour Congress

Concurrent Sessions "A"
"Alternative Approaches to Management: Roles of Members and Trustees"
Moderator: Bill Davis, Senior Financial Officer United Church of Canada
Panelists:
- Thomas Stavovy, Yale University
- Bruce Buchan, Queens University
- R. David Radford, United Church of Canada

"Screening for Ethical Investment and Divestment"
Moderator: Michael Deck, Associate Director, CCSPE,
Panelists:
- David Levy — Chair of the Ethical Growth Fund at VanCity Savings & Credit Union, Vice-President of C.M. Oliver & Company, Vancouver
- David Nitkin — President, EthicScan Canada Limited
- Bob Hebdon — Ontario Public Service Employees Union (O.P.S.E.U.)

Concurrent Sessions "B"
"Alternative Investment of Pension and Other Funds"
Moderator: Philip Creighton, Chartered Accountant
Panelists:
- Patricia Lane, — Westcoast Development Group, Vancouver
- Ted Jackson — E.T. Jackson and Associates, Ottawa
- Eugene Ellmen — Credit Union Central of Ontario

"Shareholder Action: Recent Canadian and Global Experience"
Moderator: Sally Ballingall, V-P of the Board of Directors, YMCA of/du Canada
Panelists:
- Brian Iler — Partner, Iler, Campbell
- Moira Hutchinson — Coordinator, TCCR
- John Taylor — Investor Responsibility Research Center, Washington, D.C.

Conference Summary: Max Clarkson, Professor Emeritus, Faculty of Management, Director CCSPE, University of Toronto

The Bay Street Walk is not an Option: Why Investors Must Be Active Shareholders

Eric Wollman

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Good morning. I am delighted to be here for this conference on responsible share ownership, sponsored by "The Centre for Corporate Social Performance and Ethics" and "The Task Force on the Churches and Corporate Responsibility." These two groups, in sponsoring this event, are performing an especially valuable service for representatives of pension plan sponsors, their beneficiaries and for those whose everyday lives are touched by corporate behavior, in and outside the boardroom.

I intend to use this opportunity not only to discuss current trends and developments in the financial world that are of particular concern to institutional investors, but, also as a way to get to know you and establish cooperative relationships that can serve each of us, and our beneficiaries, well.

I take great pride in the role that the New York City Comptroller's Office has taken in shareholder activism. We have developed, evolved and fine-tuned our activities since the early 1980's and our Comptroller, Elizabeth Holtzman, has been eager to extend our program, so I'm glad to have this chance to speak.

The Comptroller is an independently elected official, who is elected for a four year term by citywide vote. She is the chief financial officer of the City of New York.

As Administrative Manager in the Comptroller's office my connection to shareholder activism stems from our official position as investment officer and a trustee of four of the New York City employee pension funds. Specifically, they are the New York City Employees' Retirement System (NYCERS) the Teachers Retirement System, the Police Pension Fund and the Fire Department Pension Fund. In addition, the Comptroller is charged with the responsibility of managing the assets of these funds, as well as the assets of a fifth fund, the Board of Education Retirement System.

Each of the five funds is an independent and separate entity. Each has its own board of trustees.

Our funds are worth a cumulative $38 billion, making it the 5th largest fund in the United States. 50% of our assets are in equities, on behalf of 330,000 employees and 200,000 retirees. And, I might add, we consider ourselves to be long-term in-

Eric Wollman is Administrative Manager of the Proxy Unit in the Bureau of Asset Management of the Office of the Comptroller of the City of New York. Mr. Wollman's responsibilities include the development and implementation of shareholder initiatives, on behalf of the City's pension funds1 regarding corporate governance and performance. The Proxy Unit also votes the proxies for the funds, keeps records and issues reports. In addition, the Unit reviews proxy contests and evaluates new proxy issues.

Mr. Wollman became involved in shareholder activism in 1984 as a Director of the Comptroller's Division of Investment Responsibility. The division is responsible for the pension systems' highly successful anti-apartheid program and also deals with other social responsibility related investor concerns such as Northern Ireland and the environment.

Mr. Wollman has spoken on these issues at over fifty shareholder meetings, at a 1989 London conference sponsored by Pensions Investment Research Consultants, Ltd. and on panels sponsored by The Council of Institutional Investors and United Shareholders Association. He is listed in "Who's Who in American Politics" and "Who's Who in the East", and is the author of numerous essays on topics of civic concern.

He received a B.A. from Brooklyn College in 1973 and is currently attending Brooklyn Law School, in the class of '93. He resides, not surprisingly, in Brooklyn.

vestors, with the average holding of major companies of about 12 years.

Given this background, let's look at shareholder activism and the role that institutional investors can take in making management responsive to issues that we deem important and encouraging companies to perform well.

In recent years, the sheer size of funds held by institutions has restricted their ability to take the so-called "wall Street Walk" whenever they became disenchanted with the performance or conduct of companies in which they are invested. The Walk being if you disagree with management, sell your shares. Similarly, I would not encourage my counterparts in Canada to take the "Bay Street Walk" either.

According to a report by the Investor Responsibility Research Center ("IRRC"), institutions owned less than 8.5% of the outstanding stock on the New York Stock Exchange in 1933, when the first Federal securities law was adopted. By 1987, they accounted for some 30% of NYSE capitalization.

Whether and how to engage in shareholder activism has been a hot topic on the benefit fund agenda in the United States for years. Having worked with TCCR on the South Africa issue years ago, I know that this is the case up here as well. Perhaps our experience at the New York City Comptroller's Office will reflect some of your concerns and help you evaluate shareholder strategies concerning this issue.

The law, of course is unequivocal: all our investment decisions are ruled by our duty to maximize benefits to members of our pension systems, consistent with high standards of prudence. The return on pension assets and the security of investments are, and must remain, our paramount concern.

As managers and trustee of public employee pension systems, how did we reach this point at which both the social consequences and corporate performance of our investments are relevant to our decision making? After all, our obligation as fiduciaries is to maximize the value of assets in our care for our members; in other words, for us the bottom line is the bottom line, right?

Yes. But, as significant owners of publicly traded companies we have the capacity to help resolve questions of corporate social responsibility in a way that not only maximizes the bottom line for all shareholders, but also, at the same time, promotes decency and the general well-being of the society in which we invest. And, of course, we look to corporate governance and corporate performance concerns to add value to our investments as well.

As pension fund investment officers, we recognized that we handle "other peoples money" - our true constituencies are ordinary working people. The health of our funds is closely tied to the growth of corporate America, and as we invest beyond our borders, the corporate world as a whole.

In New York City, the history of our shareholder activism reflects three phases, beginning in 1983, which have evolved to our present status.

In late 1983, a group of trustees of our largest fund, NYCERS, began to involve themselves with the movement to force change and improve conditions in South Africa. They believed that NYCERS could use its economic leverage more effectively to fight apartheid and began to work collectively to develop a proposal for the system.

NYCERS, whose assets at that time totalled $8.5 billion, adopted unanimously, on August 3, 1984, a resolution establishing a phased, selective divestment program for companies that refused to act morally on behalf of the repressed majority black population in South Africa. The Comptroller established the South Africa Investment Responsibility Unit, whose mandate was to press American companies to act against apartheid, to monitor their compliance with our resolution, to prepare shareholder proposals seeking ethical corporate behavior in South Africa and to establish a network for other pension funds. We quickly learned we were not alone in this struggle and linked up with people like Tim Smith of ICCR, who was dubbed the "godfather of divestment", and locally Moira Hutchinson, of TCCR as well.

Under Phase I of our program, companies were monitored for full compliance with what was known as The Sullivan Principles. In addition, our companies had to stop doing business with the military and police forces of South Africa, the parastatals that provided energy and any other agency that administered the laws of apartheid. We met or wrote to senior management of 156 companies invested in South Africa and determined that 44 were covered by Phase I. But we also knew that letter writing was not enough, and we began our shareholder proposal campaign. Since 1985, we have filed nearly 200 South Africa related shareholder initiatives, governed by Rule 14a-8 of our Securities Exchange Act.

In any event, while some firms responded to our requests, pleas and blandishments, many remained blind to the deteriorating situation during the mid and late 1980's and in the end we did impose our ultimate sanction and divested.

At about the time we were gearing up our anti-apartheid activities, an editorial in the Brooklyn Spectator advocated a fair employment code for Northern Ireland. Research done in our office turned up strong evidence of religious discrimination at a number of U.S. companies in Northern Ireland. From this work came forth the MacBride Principles, a set of principles announced in November 1984. The shareholder proposal campaign on behalf of these principles has continued to gain support and in April, 1990 Comptroller Holtzman announced that three major American companies agreed to implement fair employment standards at their Northern Ireland operations.

Cynics ask us where do we draw the line or ask about the slippery slope of social activism.

We believe that as matters of social concern are brought to our attention we will examine each one on a case-by-case basis and make a determination if shareholder activism can, in fact, make a impact and protect our investments. Simply put, we draw the line where it needs to be drawn.

I want to talk about our initiatives in the area of corporate governance and shareholder democracy. As our social activism expanded, we became increasingly aware of the inequities in the proxy voting system. As matters stand, voters can be subjected to coercive pressure by management. We learned that open proxy voting can, and often does, lead to re-solicitation by management, which is often hostile to negative votes. In order to make our shareholder initiatives work well we have to have a level playing field. Yet, corporations have various means of determining actual ownership. Even when shares are held in street name, confidentiality can be breached.

Accordingly, in 1988 NYCERS, later followed by our other funds, sponsored twelve shareholder proposals asking companies to adopt the confidential ballot. In total, sixteen shareholder proposals on this matter were offered that year. This was the year of change for corporate governance. The Wall Street Walk had been replaced by an old Madison Avenue slogan "We'd rather fight than switch."

Our program was an immediate success. Five of our proposals never came to a vote; they were withdrawn after the companies, Alcoa, Loral, 3M, Sara Lee and General Mills, agreed to adopt the confidential ballot. We have continued to press this campaign and I can report back two things that happen every year since: - one, several companies voluntarily accommodate us and two, we've fine- tuned the proposal making it more specific, leaving less wiggle- room for management and, we think, more efficacious when presented and, hopefully, adopted. In 1990, we received nearly 62% vote at Lockheed, helped in part by the takeover fight and, in fact, Lockheed has adopted the secret ballot. We have already filed 19 proposals for 1991.

In addition to the confidential ballot campaign, we have developed and submitted proposals dealing with the poison-pill and the Delaware take-over statute. Both campaigns were limited in scope and are not being repeated in 1991.

Now, we are moving into the next phase of shareholder activism, where we shift from the broad generic reforms of governance to initiatives that are more carefully crafted and targeted to bring about improved economic performance at individual corporations. As long-term stockholders, we are concerned with improving the long- term performance of the corporations whose equities we hold. As our op-

tions to sell our holdings become increasingly limited, we have to adopt a more directly economic, company specific approach. In that connection, our agenda is re-focusing toward identifying corporations where economic performance is poor and could be improved by shareholder initiatives.

Accordingly, we are targeting those companies that are not doing well. In 1991, we intend to make a strong statement about the importance of a company's board of directors and the way they supervise management on behalf of shareholders. Too often, directors are chosen by the C.E.O and are individuals who have other business ties with the corporation that may present them with a conflict.

Hence, in September, NYCERS sponsored a new proxy proposal motivated by truly poor corporate performance. We filed a resolution asking Harcourt Brace Jovanovich to provide a board of directors consisting of a majority of outside, independent directors and, also, for the creation of a fully independent nominating committee. We consider this only the shot across the bow. We will take considered actions whenever we feel it is necessary, and more shots will be coming.

In reviewing the companies in our portfolio, we examined standard measures of performance, such Return on Equity (ROE) and return on total capital by the industry sector. We plan to target several additional companies for attention in 1991.

We believe that, in some case, outside directors can make a difference. According to studies of boards of directors in general, 69% of the directors are now outsiders. While we recognize that there is an academic debate about the effectiveness of outside directors, we have concluded that in troubled companies, outside directors can make a difference.

Of course, we do not say that only a company with outside directors can perform well. Ma and Pa Kettle may run an excellently - performing company. But, the research shows that when a company is performing poorly, inside directors may have a difficult time turning the company around.

In addition to concerning ourselves with the composition of the board, we have also addressed the existence and composition of the nominating committee. Individuals with varied backgrounds are invaluable in light of a company's serious financial difficulties.

We believe that the system of checks and balances designed in corporate structure is important to shareholders. It should not mean that we write checks, only to see our balance sheets dwindle. We don't want to write blank checks to non-performing directors, and we do want checks on corporate performance and on our investment return.

That, then, is a narrative of our program of direct shareholder activism. We think it is effectively influencing the behavior of American corporations. We know that these actions involve a change from the passive approach of the past. Change rarely comes easily.

But we do want to engage in productive partnerships with corporate America and as we go "international" we intend to have our ideas and goals follow our investments abroad. We believe our approach is sophisticated and we consider it a balanced, responsible program that is consistent with our duty as trustees.

Legal Issues for Trustees and Managers

Edward J. Waitzer

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Outline of Presentation

I. PRUDENT PERSON RULE

A. Ethical Investment

1. Economic interests of present and future beneficiaries

2. Other 'benefits' may be considered

Cowan v. Scargill (1984) 2 All E.R. 750 (Ch.D.)

B. Shareholder Activism

1. Same standards as are applicable to ethical investment generally apply

ERISA Guidelines

2. Increasing focus on corporate governance paradigm legitimates activism

CALPERS, USA proposals

Ontario Pension Commission regulations

C. Costs of Prudence

1. Accountability of trustees

2. Costs of activism

II. LIMITING EXPOSURE (note personal liability of trustees)

A. Permissive Legislation

B. Amendments to Trust

1. Variation of Trusts Act

2. Transfers to new plan

3. Discretionary authority in new trusts

C. Ex Ante Court Approval (Trustees Act)

D. Minimize Exposure to Damages

1. Independent advice (need for new experts)

2. Documented reasons (focus on economic benefits to present and future beneficiaries)

3. Beneficiary approval

Paper submitted for proceedings follows:

TASKFORCE ON THE CHURCHES AND CORPORATE RESPONSIBILITY

PENSION FUND TRUSTEES AS SHAREHOLDERS

May 1989 STIKEMAN, ELLIOTT

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Summary and Conclusions

We have been retained to examine the responsibilities and abilities of pension fund trustees as shareholders in Ontario. More specifically, this memorandum attempts to summarize the criteria which can and should be used by pension fund trustees in their decisions to vote proxies, to initiate shareholder proposals or to generally undertake shareholder actions, all in the context of the fiduciary duties imposed upon them by statutory and common law.

The conduct of a trustee as shareholder, like his conduct as an investor, is governed by the prudent person rule as set out in the Pension Benefits Act, 1987 (the "Act") and the case law. The general position supported by the case law is that such rule requires trustees to have regard primarily to financial considerations, usually expressed in terms of economic return, when acting in the best interests of the beneficiaries. Ethical, or moral, criteria may be introduced, so long as they add to or do not detract from economic return, such economic return taking into account the costs of forwarding the ethical position. In certain circumstances, ethical criteria may properly form an assessment of potential investment returns.

As shareholders, pension fund (the "Fund") the trustees (the "Trustees") of the of the Anglican Church of Canada are directed by the Statement of Investment Policies and Goals (the "Statement") to vote securities in the best interests of the Fund. That best interest is primarily defined in economic terms (see, e.g., the Cowan decision described below). It clearly does not require simply siding with management. Indeed, where management undertakes non-ethical activities which may be detrimental to the value of an investment, and where disinvestment is not appropriate, the Trustees may be obligated to oppose such measures as shareholders, always with regards to the costs involved. Where shareholder activism on an ethical

basis does not detract from investment return, the general legal position is that such activity is permitted.

Governance of the Fund

The present issue arises in the context of a discussion about the proper or possible conduct of the Trustees of the Fund in relation to their activities as shareholders. The Fund is governed by the Trustee Act and the Act, both Ontario statutes, as well as by the common law. The Investment Regulations to the Act provide that administrators of a pension fund must establish and adopt a statement of investment policies and goals for the fund. The Statement, drafted and applied by the Trustees, reflects that mandate. Section 16(b) of the Statement of the Fund essentially provides that the voting of securities held by the Fund "shall be performed using the best interests of the Fund as the sole voting criterion". In addition, the Statement provides that the instructions given to investment managers of the Fund include the statement that they invest the Fund with those corporations whose social responsibility is in accordance with the social conscience of the

Ed Waitzer is a Partner with the Toronto law firm of Stikeman, Elliott. From 1977 to 1981 he worked for the Toronto Stock Exchange, latterly as Vice-President, Listing and Distributions. He has been called to the bar in Ontario and New York and works in both the Toronto and New York offices of Stikeman, Elliott. He serves part–time on the faculty of Osgoode Hall Law School.

Mr. Waitzer has written on a variety of legal and public policy subjects, including fiduciary responsibilities and ethical investment. He also is a director of a number of corporations, foundations, and community organizations.

community as determined by the Trustees. Such instruction is subject to the requirements of the Act.

The Prudent Person Rule

The trustees of a pension plan are governed by the law of trusts: See, for example, Re Sandwell & Co. Ltd. and Royal Trust Corp. (1985) 17 D.L.R. (4th) 337 (B.C.C.A.); Cowan v. Scargill (1984) 2 All E.R. 750 (Ch.D.). For present purposes, certain aspects of a trustee's duty are of import. For example, a trustee must act in the best interests of the beneficiaries. A trustee must represent the interests of the beneficiaries of the trust as a whole, and cannot favour one particular group (the so-called "even hand" rule). More importantly, trustees are subject to a standard of prudence, described in the case law as follows:

> "As a general rule the law requires of a trustee no higher degree of diligence in his office than a man of ordinary prudence would exercise in the management of his own private affairs": Learoyd v. Whitely 12 A.C. 727.

Subsection 23(1) of the Act requires that a pension plan administrator

> "shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person."

The above formulations may be termed, for present purposes, the "prudent person rule". The prudent person rule governs the conduct of a trustee in making investment decisions on behalf of the trust. It is also within the parameters of this rule that the conduct of the Trustees as shareholder activists must be assessed.

What is "Prudent" Conduct for Trustees as Investors?

The primary focus of this memorandum is the conduct of trustees as shareholders. However, as developed more fully below, the doctrine of prudence as regards shareholder activity by trustees has been likened by some commentators, rightly or wrongly, to that applied to trustees in making their investment decisions. Further, as there is little legal authority on the subject of trustees as shareholders, it is appropriate first to briefly summarize the trustee's duty of prudence as regards investment, then to examine the appropriateness of the analogy between trustee as investor and trustee as active shareholder, and finally to attempt to define the doctrine of prudence as applied to shareholder activism.

There is a dearth of Canadian legal authority on the extent to which trustees may introduce ethical considerations into their investment decisions. There is, however, some British and American authority on point.

The leading case is Cowan, cited above, a British decision involving a conflict concerning the investment of the assets of the National Coal Board Employees Pension Fund. Such fund was run jointly by board and union appointed trustees, and had wide investment powers. The union trustees refused to approve an annual investment plan for the fund unless it was amended to prohibit any increase in overseas investment, to provide for withdrawal from existing overseas investments at an opportune time, and to prohibit investment in energy industries which were in direct competition with coal. The union trustees' position accorded with union policy not to invest outside Britain or in industries directly in competition with coal. The plaintiffs, being the board trustees, sought a declaration against the union trustees that they were breaching their duties as trustees by refusing to approve the investment plan. The declaration was granted.

According to Megarry V.C., the overriding duty of trustees is to exercise their powers, impartially, in the best interests of the present and future beneficiaries of the trust. At page 760, he wrote:

> "when the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their best financial interests. In the case of a power of investment, as in the present case, the power must be exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in question; and the prospects of the yield of income and capital appreciation both

have to be considered in judging the return from the investment."

In a lengthy but revealing passage, Megarry V.C., in discussing a legal memorandum provided to the union trustees, described the position of trustees as follows:

> The legal memorandum that the union obtained from their solicitors is generally in accord with these views. In considering the possibility of investment for 'socially beneficial reasons which may result in lower returns to the fund', the memorandum states that 'the trustees' only concern is to ensure that the return is the maximum possible consistent with security'; diversification.

However, and then it refers to the need for it continues by saying that:

> 'Trustees cannot be criticised for failing to make a particular investment for social or political reasons, such as in South African stock for example, but may be held liable for investing in assets which yield a poor return or for disinvesting in stock at inappropriate times for non-financial criteria.'

This last sentence must be considered in the light of subsequent passages in the memorandum which indicate that the sale of South African securities by trustees might be justified on the ground of doubts about political stability in South Africa and the long-term financial soundness of its economy, whereas trustees could not properly support motions at a company meeting dealing with pay levels in South Africa, work accidents, pollution control, employment conditions for minorities, military contracting and consumer protection. The assertion that trustees could not be criticised for failing to make a particular investment for social or political reasons is one that I would not accept in its full width. If the investment in fact made is equally beneficial to the beneficiaries, then criticism would be difficult to sustain in practice, whatever the position in theory. But if the investment in fact made is less beneficial, then both in theory and in practice the trustees would normally be open to criticism.

This leads me to the second point, which is a corollary of the first. In considering what investments to make trustees must put on one side their own personal interests and views. Trustees may have strongly held social or political views. They may be firmly opposed to any investment in South Africa or other countries, or they may object to any form of investment in companies concerned with alcohol, tobacco, armaments or many other things. In the conduct of their own affairs, of course, they are free to abstain from making any such investments. Yet under a trust, if investments of this type would be more beneficial to the beneficiaries than other investments, the trustees must not refrain from making the investments by reasons of the views that they hold.

Third, by way of caveat I should say that I am not asserting that the benefit of the beneficiaries which a trustee must make his paramount concern inevitably and solely means their financial benefit, even if the only object of the trust is to provide financial benefits. Thus if the only actual or potential beneficiaries of a trust are all adults with very strict views on moral and social matters, condemning all forms of alcohol, tobacco and popular entertainment, as well as armaments, I can well understand that it might not be for the 'benefit' of such beneficiaries to know that they are obtaining rather larger financial returns under the trust by reason of investments in those activities than they would have received if the trustees had invested the trust funds in other investments. The beneficiaries might well consider that it was far better to receive less than to receive more money from what they consider to be evil and tainted sources. 'Benefit' is a word with a very wide meaning, and there are circumstances in which arrangements which work to the financial disadvantage of a beneficiary may yet be for his benefit: see, for example, Re Towler's Settlement Trusts [1963]3 All ER 759, [1964] Ch 158; Re C L [1968] I All ER 1104, [1969] 1 Ch 587. But I would emphasise that such cases are likely to be very rare, and in any case I think that under a trust for the provision of financial benefits the burden would rest, and rest heavy, on him who asserts that it is for the benefit of the beneficiaries as a whole to receive less by reason of the exclusion of some of the possibly more profitable forms of investment. Plainly the present case is not one of this rare type

of case. Subject to such matters, under a trust for the provision of financial benefits, the paramount duty of the trustees is to provide the greatest financial benefits for the present and future beneficiaries."

In sum, the above statements are quite restrictive of the ability of trustees to use ethical criteria in investment decision-making. Financial criteria are paramount. Essentially, the failure to make a good investment for ethical reasons is a breach of trust. Moreover, unless the beneficiaries are a homogeneous group with similar views (see Megarry V.C.'s example), there is danger that trustees would breach their even-hand obligations even if they acted according to the views of a significant majority of the beneficiaries of the trust.

It could be argued that Cowan is a poor case for the issue at hand. The defendants were unrepresented by counsel. The decision was rendered in a period of significant public animosity towards the union involved, which had initiated a national strike. The decision may be reflective of a British perspective that differs from that deemed acceptable in a Canadian context. However, it must be stressed that the decision and the statements made therein were rendered by a respected judge and are consistent with the traditional view of the law respecting trustees. Further, because of the limited case law on point, there is little legal authority that is either contrary to Megarry V.C.'s 'views or that focuses in greater detail on a number of issues raised in his judgment. For example, Megarry V.C. suggests that the term "benefit" may include the concept of ethical benefit. But there is little guidance to trustees as to how to ascertain the views of beneficiaries in determining what a benefit for purposes of the fund should be. What proof would be required that an ethical policy was in the interests of the beneficiaries "as a whole"?

Flowing from Cowan's focus on financial return, in some cases, it may be possible to argue ethical investment may coincide with better returns; that is, the shunning by investors of many companies with South African ties may make it prudent, in terms of financial return, not to invest in such firms. However, trust law imposes restrictions on an ethical investment policy which would involve the foregoing of a higher rate of return, or accepting a lower rate of return or higher risk, than would otherwise be the case.

The U.S. common law position as regards investment is similar to that taken in Cowan: See, for example, Blankership v. Boyle (1971) 329 F. Supp. 1089 (D. Ct.); Withers v. Teachers' Retirement System of the City of New York (1978) 447 F. Supp. 1248 (D. Ct.); Marshall v. Glass/Metal Association and Glaziers and Glassworkers Pension Plan 1980 507 F. Supp. 378 (D. Ct.,Hawaii). The duty of undivided loyalty to the beneficiaries, as expressed therein and elsewhere, requires that trustees act only for the benefit of beneficiaries, and that has been generally viewed as being the financial interests of beneficiaries. That too has been the general position taken by the U.S. Labor Department under the Employee Retirement Income Security Act ("ERISA"), the federal legislation affecting most private pension funds in the U.S. (but not government-related or church funds, those that have been very active shareholders recently).

The prudence standard, as described above, may be subject to evolution, albeit slowly, as ethical investing becomes a more popular topic. The prudence standard has been described as an evolving concept. Further, there are legal authorities, increasingly vocal, which argue that social and ethical issues are proper considerations for trustees: See, for example, Lane, "Ethical Investment: Towards the Best Interest of Everyone", (1987) 45 The Advocate 171. As ethical and social issues become more important for consumers, governments and investors, moreover, the standard of prudence may dictate that such considerations are necessary, as they impact upon the long term value of the firm. Case law does tend to react to popular trends, and cases such as Cowan may be seen, by courts as well as commentators, as too restrictive in the future. But, at this time, trustees should be careful to give ethical considerations no more than incidental importance. Of course, where the assessment of investments on the basis of ethical criteria can enhance economic return, trustees should introduce them. In that regard, there are a number of studies attempting to assess whether corporate ethical behaviour leads to better economic performance. If ethical choices do not lower investment returns, the practical (and legal) reality is that trustees

are unlikely to face judicial interdiction, regardless of their motivation (see, for example, Megarry V.C.'s statement in Cowan). If investment returns are lowered, trustees are in trouble.

The Relationship Between Trustee Conduct as Investor and as Shareholder Activist

The next issue is whether the restrictions placed on trustee investment apply also to shareholder activism on ethical issues.

The argument to the contrary could take the following form. Firstly, in exercising the rights of a shareholder, a trustee is not exercising powers of investment. Rather it is exercising the degree of diligence required to ensure that management is responsive and accountable. Further, the dropping by the Ontario Pension Commission of proposed regulations in July 1986 that pension funds should be "passive" investors could imply that passive investing is not a requirement at common law, but must be statutorily imposed. Secondly, it could be argued that unacceptable corporate behaviour leads to lower economic performance. Given the limited size of the Canadian financial marketplace, the "Wall Street rule" to vote with one's feet, or disinvest, is not appropriate. Therefore, pension funds are forced to attempt to take measures designed to enhance corporate performance through their positions as shareholders.

The more common approach is to treat the trustee's position as shareholder similarly to his position as investor. The standard of prudence applied in each context is essentially the same, namely, that shareholder activism should be done only with a view to maximizing a pension fund's investment return. For example, Megarry V.C. in Cowan appeared to draw no distinction between disinvesting and voting on motions raised at a shareholders meeting. Legal commentators have stated that the law treats the trustee's conduct in the two situations the same: See, for example, Ward, Socially Responsible Investment (1986), at 27, ("Trustees are under the same constraints as they would be restricting their investments"). The U.S. Labor Department's view is that the prudent person rule applies equally to voting decisions. It has stated

> "To act prudently in the voting of proxies (as well as in all other fiduciary matters), a plan fiduciary must consider those factors which would affect the value of the plan's investment": See Labor Department Guidelines for ERISA Fiduciaries, Feb 23, 1988, footnote 4.

What is Prudent Conduct for Trustees as Shareholders?

To what extent, then, can trustees act as shareholders? As with investment decisions, the trustees should be guided by the goal of maximizing the value of the investment. Thus, if an investment, or disinvestment, decision could be justified for economic reasons, so would voting in a particular way. The trustees must be careful to ensure, and perhaps document, their positions as being carried out with economic criteria in the fore. Thus, for example, voting against defensive tactics, such as "poison pills", may be justified on the basis of economic studies demonstrating the adverse economic consequences to securities of firms adopting them. There are also studies to the effect that, in a number of ethical areas, good corporate behaviour leads to increased economic returns for investors. Some issues clearly have, as yet, been subject to little economic analysis; for example, there would appear little evidence on the effect of corporate pay equity or minority hiring on economic performance. Strong support for such matters may not go towards increasing investment value. However, where such policies, if adopted by the corporation, would not hurt the economic value of the investment, there would seem little need to restrict the trustee's ability to support them.

Where there is no clear-cut economic implication in a voting decision, a trustee's only obligation is not to spend an inordinate amount of time analyzing a proposal, since this could be seen as a waste of plan assets (a view held by the U.S. Labor Department). This raises a point of particular importance. Shareholder activism has its costs. Some forms of it, such as a major proxy fight, may be quite expensive. Mere voting or discussions at a shareholders meeting may be relatively inexpensive. The costs of obtaining information relating to ethical issues may be significant; though in this regard it is noted that a great deal of research is and is becoming increasingly available, for free (for example, it is our understanding that the Trustees could draw, freely, on the

work of the Public Social Responsibility unit, and through it, on the work of other organizations). Expenditures of a fund can cut into investment return as certainly as investment in poorly performing securities. Thus, trustees should be prepared to justify the costs of activism with reference to the financial benefits which can be achieved. Trustees should also take into account the "free rider" phenomenon. If shareholder activism is appropriate, it may be prudent to either seek support from other shareholders or let another shareholder take the initiative.

There are some spheres, generally regarded as less related to ethics, where, subject to cost concerns, trustees may wish or even be required to be very vocal. For example, the standard of prudence requires that investment decision-making be informed. A pension fund should be encouraged to seek out information which is of assistance in assessing the financial performance of the company in which it has invested. Similarly, any investor has the right to oppose what it sees as management inefficiency or self-dealing. Ethical issues may again be related to financial performance; as with investing, trustees should be careful to ensure that ethical considerations are not given primary importance.

Social Responsibility and Corporate Governance

Timothy Smith

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Good Morning.

I'm delighted to be here. This is my alma mater. I graduated from the University of Toronto, 25 years ago and it brings back special memories to be here on this campus and in Hart House again.

It is hard for a preacher to be on a panel and be allocated 15 minutes to speak and be "enthusiastic" about it, but I'll try to put a lid on the preacher in me. The presentation I am making today is on the issue of Corporate Governance and Social Issues that are facing us on a Corporate Responsibility Agenda for the 1990's.

I work with the Interfaith Centre on Corporate Responsibility which is a coalition of church investors, 250 Roman Catholic Orders, and Dioceses, Protestant denominations and agencies, with approximately 30 billion dollars in portfolios that they attempt to be ethical and socially responsible stewards for. We are primarily US Church investors but we are an international organization. The Sisters of Charity of Halifax which is represented today by Sister Terese Moore are as active in ICCR work as they are in the Taskforce here, a sign of the internationalization of this work.

Why are the Churches in the United States involved in Corporate Social Responsibility work? I think the theme you will hear from me is very similar to the one you hear from a representative of the Taskforce. We are concerned about corporations and how they affect our lives. We are concerned about economic and social justice. We are concerned as investors that have a responsibility to look, both at the bottom line which creates returns to our pensioners and endowments and the "social bottom line" so that our values, our social concerns and our religious traditions are on the same table with our investments and our economic decisions. For many years in this country and in the United States that was not the case. In the 1950's and 1960's we in religious communities were official schizophrenics. We had our ethics in one pocket and our stock portfolios in the other and never the twain should meet. But it is a very different reality today.

I'm going to list the issues, in a sort of issue smorgasbord but then try to dig in with a couple of issues on the menu and give you a little bit more flavour, hopefully in a way that satisfies your appetite.

Some of these issues have a long history. Others are relatively recent manifestations, some are highly controversial, others are exceptionally reasonable. Let's pause first and try to put the discussions in a context. I will use some examples from the US to make that point.

In 1990, it is twenty years since the first public interest shareholder resolution was filed with General Motors in 1970 and 19 years after the Episcopal church filed the first church sponsored shareholder resolution again with General Motors in 1971. Twenty years later the context is very different in the United States. Instead of only the church sponsoring shareholder resolutions trying to get management attention, celebrating if we got 3% of the vote, or if

Timothy Smith is the Executive Director of the Interfaith Centre on Corporate Responsibility (ICCR), which provides research and coordinates action for some 25 Protestant denominations and agencies and 230 Roman Catholic orders and dioceses active in bringing social concerns to corporate attention in the U.S.A. Approaches to concerns include dialogue with management, shareholder resolutions, divestment of stock, and working to impact public policy.

His responsibilities at ICCR focus on translating statements of concern on corporate issues into action. He speaks at shareholder meetings, interprets corporate and social issues in the media, and has testified before congressional and United Nations committees. Mr. Smith played a key role in the formulation of the Valdez Principles on corporate environmental performance.

an agreement was reached with the corporate leadership with which we were in dialogue, in 1990 we have institutions with $500 billion who are involved in the arena of corporate social responsibility. They include institutions like the Teacher's Insurance Annuity Association, College Retirement Equity Fund with $90 billion the largest Pension Fund in the world. This is a pension fund, not taking the Bay Street or the Wall Street walk but using its pension money to make a point with management on issues like South Africa, Corporate Governance and others. The City of New York, the State of New York, the State of Minnesota, the State of Connecticut Pension Funds, a number of foundations and trade unions are among those actors who are looking at their investments and decided its time to put their values to work as they make investment decisions.

Some of these institutions have decided to screen parts of their portfolio. New York City for example has a plan in place on South Africa, have divested stock in most companies in their portfolio that were in South Africa. That is also true for the State of California, again one of the largest sets of pension funds in the country with public employees and teachers having over a $100 billion. Because of legislation passed in California those State Pension Funds are managed on what they call a South Africa free basis. The TIAA-CREF has taken a slightly different approach, not screening out those investments, but taking their stock (often holding 1% of the stock in a company), and filing shareholder resolutions for discussions with management and debate at the stockholders meeting. So in the context of that $500 billion of institutional and individual investor wealth, different approaches are being used toward common goals. Sometimes it is a screening out approach of tobacco stock, companies that make nuclear weapons, South Africa, sometimes using those shares to make a point with corporations. The network has grown immensely and the respect that the issues have gained has grown as well in the business community.

The issues that I am going to talk about today, are outlined in the Annual Report of ICCR. It is not a report about an organization so much, as the snapshot of what concerned investors and those in the religious community are doing in the arena of corporate social responsibility.

Let me turn to the smorgasbord and quickly list some of the issues that have been or will be on corporate responsibility and proxy ballots in the spring of 1991. South Africa, an issue that has 20 years of history with us, equal employment opportunity, fair employment practices and non-discrimination for women and ethnic minorities, issues related to militarism and peace, and involvement in the nuclear arms race. Alternative investments for those of us in United States this is the other side of the coin where we look at our portfolios recognizing that we don't simply need to invest in a Mobil Oil or an IBM with that portfolio, but we can also put money into a low cost housing scheme or a co-operative, or a minority business in the inner city so that our money does dual duty, making a return for the investor and also helping to build that low income housing cooperative for example. The alternative investment sector is growing, not just among church investors but also insurance companies. Most recently in a report insurance companies indicated that they had 1.2 billion dollars in what they called social investing. They used the term to describe putting money to work in something like a low income housing project. Their 10 year survey showed that they had remarkably few delinquencies, a reasonable return and that this category of "social investing" as they call it, (alternative investing as the churches call it) was growing.

Baby Formula Abuse is an issue that has been with us for over 15 years and will soon be in the headlines again, as the debate grows with companies like Nestle and American Home Products. The environment, energy, banks and the complex question of the world debt. Tobacco and tobacco related issues. Fair employments in Northern Ireland, Corporate Governance Concerns, how US Companies in the North of Mexico are treating their primarily female workforce and their wages and working conditions, health and safety and the toxic waste which too often gets pored into local communities in that area. So that in the United States as we talk about socially screening portfolios we aren't simply talking about a small firm like the Calvert Group with $500 billion in their social screened investments. We are also talking about the J P Morgan Bank running money on a socially screened basis because the demand is client driven. There is a university, a foundation, a church group, a trade union who is a

client who says they have these concerns and they want this kind of screen in their portfolio. The Morgan steps up to the plate and says while this may not be their traditional investment philosophy they are pleased to do it if the client asks for it. That is a true revolution in an American investment decision making.

You have had a nibble of each of these issues, now lets look at a couple of them a little more in depth. I start with an issue that we had two decades of history in Canada and the United States. That is the issue of foreign investment and the role of our banks in South Africa. All of us have seen in the last year the consensus, reflected in the press accounts, about what is happening in South Africa. Namely that economic pressures and sanctions have been the key component in bringing about the changes that we have seen. I think that is very interesting. Five years ago we would have seen a severe split on much of the press coverage asking, do sanctions ever work? Yet what I see from both the conservative press and people inside South Africa is a clear indication that these pressures were one important factor in bringing about the changes that occurred and in pushing the South African government to the negotiating table. I think some of the proof for this case comes from the government themselves who declared that the financial sanctions they face have been very very effective. They told the white electorate that if the 1990's are going to be different and there is to be economic growth again, they must have substantial reforms. The message of Nelson Mandella when he was in North America was unequivocal. Keep the pressure on, keep the pressure on until apartheid is eradicated and non-racial and a non-sexist democracy is established in South Africa. Our church colleagues in South Africa urge us to maintain this pressure as well.

I would suggest that banking and financial pressure is especially important now. We have won many victories in the United States and Canada as our banks have stopped lending to the government and to the private sector in South Africa, and stopped selling South African gold. But we are still encouraging US banks to end correspondent banking relations and not give the South African government the benefit of the doubt by giving them an extended repayment scheme. We are pleased to note that 9 banks in the last year have agreed with this tougher position and banks like the Morgan are taking that kind of stand while unfortunately banks like Citibank have given a very lenient deal to the South African government. We are in the last chapter of this struggle in South Africa and its one we want to see through to the end.

Let me turn to a second issue which probably doesn't get a lot of the same kind of attention that the South Africa issue does but I predict will emerge as one of the more important issues of the 90's. It deals with the whole question of tobacco. I know that in Canada the debate about smoking is in a much more advanced stage than it is in the United States and many more important breakthroughs have been won in public policy. As some of you from the church community would testify, tobacco companies have been on your "sin stock" list for years and years. The United Church of Canada never owned it and never would. But in the United States we have a mixture of those who would not own this stock and those who do. So a new debate has emerged from the overwhelming evidence that has come out about the dangers of tobacco. We know for example that tobacco helps kills 400,000 people in the United States every year. And yet Philip Morris makes a 40% profit from its tobacco business. It is a very appealing stock. Nicotine is addictive, but profits may be even more addictive. The debate is going to ripple out from the tobacco company. Insurance companies in the US who give preferential rates to non-smokers because they know the people who don't smoke have less health problems and have longer life; those same insurance companies are companies that own millions and millions of dollars of Philip Morris and Loews and other tobacco companies. What does it mean for you to know that evidence and yet at the same time be investing in these companies. What is your responsibility? Companies like 3M and Ganneth who operate billboards in the United States and so prominently displayed those adds that encourage particularly young people to smoke will be asked to assess their ethical and social responsibilities. I think that the tobacco issue is going to open up a very interesting sector in this corporate responsibility debate.

Often in this point of a speech somebody says "in conclusion." As I heard a speaker say recently--"You say that be-

cause you are not going to stop but because you want to give the audience hope."

In conclusion, I want to deal very quickly with the issue of environment. There is a new energy, a new concern, a new commitment which has resulted in some new approaches. And as you all know the resurgence of this concern comes not simply because we are concerned for wild life but because we have a legitimate concern about the very survival and health of our planet. The example I bring to you is a coalition that created a new set of standards of environmental excellence called the Valdez Principles. A remarkable coalition announced these standards a year ago. They included the Comptroller of the City of New York, the Comptroller of the State of California and number of religious investors, a number of people in the investment community that were experts in social investment and also some in labour and the mainstream environmental groups in the United States. The significance of this announcement was partly in the coalition that announced it. This year 60 companies will be receiving shareholder resolutions asking them to deal with these Valdez Principles either by doing a report on the principles or by signing them and agreeing to live up to them. This is a debate where there is a great deal of common learning because business leaders in the United States are quite clear the environment is one of the key issues for the 1990's. It is not a debate about having to convince somebody to deal with the environment. The issue comes down to- should a company like Mobil, ATT, Exxon, sign somebody else's set of principles. That becomes a point of corporate governance and corporate power. Some of the results of this debate up to this point have been:

1. Top management and boards of directors paying a lot more attention to the environment and their environmental responsibilities.

2. Agreements to report much more fully to shareholders.

We have also seen a number of companies who are actually sitting down right now and saying we believe it might be acceptable to sign these set of principles. I think this will be a long term debate in the next decade. The Valdez Principles are a representative sample of that debate.

What we are seeing is industry codes emerging so that companies don't have to sign "somebody else's set of principles." The chemical industry, petroleum industry both have developed codes of conduct. In a sense if the issue of raising principles on the environment from the outside has that kind of impact where people set up internal standards and work to live up to them, that is also a positive step forward. This will clearly be one of the major issues for the 1990's.

I hope this little smorgasbord pictures the list of issues and gives you a flavour of what the key concerns are that we are working on in the US.

Corporate Governance and the Institutional Investor

Peter De Auer

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Robert Byrne said: everything is in a state of flux, including the status quo. This quotation may be a good place to start today's discussion.

For institutional investors, the need for corporate governance is due to the fiduciary responsibilities we hold. For example, we as pension fund managers, are responsible for in excess of $200 billion of funds which will eventually serve to provide the livelihood of those who have retired from regular employment. We have a clear responsibility to those people not only to manage their assets to obtain an appropriate rate of return on investment, but also to insure that these assets are safe from non-investment risks, such as those arising from poor regulation.

I believe that Canada has one of the best legal and regulatory frameworks with respect to the investment industry, worldwide. The emphasis on disclosure, the protection of investors and the timely revisions of the various securities acts provide a stable environment for investment managers. In addition, regulators are accessible to investment professionals so that there is a continuous interchange of ideas between the regulators, lawyers, accountants and investors.

Nevertheless, institutional investors have had to intervene in recent years to deal with several contentious issues which have taken up all the time we devoted to corporate governance. The first task has been in the regulatory field and to understand where we may go towards in the future we need to understand the issues we have dealt with in the past, including just how complex and time consuming corporate governance really is.

Rather than bore you with the legal issue, I plan to take you today through the life of corporate governance in the trenches, based largely on personal experience.

The first part consists of outlining the traditional corporate governance issues faced by investors. It serves to illustrate how complex this issue is.

The second will deal with broader issues of social responsibility.

As a practical matter, corporate governance for institutional investors boils down to two main issues:

1) the consequences inherent in the presence in Canada of unequal or non-voting shares; and,

2) the need for protecting disenfranchised shareholders during takeovers.

Canada is unique among countries with significant equity markets in that the degree of unequal or non-voting shares present in the system is high. This effectively means that some shareholders have a disproportionate share of the control of corporations. This presents two problems. One has to do with takeovers, which will be treated later, the other with the inability of the non-voting shareholders to "throw the rascals out" if they mismanage the assets under their administration. It appears to me that there are reasonable safeguards which can be established in the case of takeovers but there is no solution to the problem of shareholders wishing to change management which is ineffective.

The historical problem of dual classes of shares in the event of a takeover is that the non-voting owners could do little to protect themselves in the case of change of control. Their only response was to vote

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Mr. De Auer is a past Chairman of the Canadian Council of Financial Analysts, representing approximately 1,900 financial analysts across Canada, and is widely known for his expertise on corporate governance issues and the management of pension funds.

with their feet, that is sell their shares. This solution has proved to be increasingly unsatisfactory to institutional shareholders whose very size would depress the market significantly if they decided to reduce their holdings.

The participants

The participants in these debates, from the investor side, include those institutional investors who have chosen to participate actively and those who advise them. The latter includes the Canadian Council of Financial Analysts, which is the umbrella organization ultimately representing some 1900 financial analysts across the country and which has worldwide affiliations with similar professionals. In addition, the brokerage firm of Allenvest provides a corporate governance service as one of its principal products.

The solutions

1) The solution to the non-voting or unequal voting share issue was the development of "coattail" provisions. These involve embedding in the regulatory framework the necessity for a bidder for voting shares to make a similar offer to non-voting shareholders.

2) The solution to the takeover problem is to increasingly demand approval by a majority of the minority shareholders.

However, as soon as these protective features were put in place, corporations began to make life difficult for shareholders by inventing "poison pills", which have the objective of making takeovers difficult. The objections of shareholders resulted in the transformation of poison pills into shareholders' rights plans which removed the former's objectionable features in favour of fairness to all shareholders.

Actual cases

Now for the fun part. The opening gun for these debates was sounded in 1984 by a submission by the Canadian Council of Financial Analysts of a report written by its executive director, Barbara MacDougall, to the Ontario Securities Commission. We asked for a ban on the creation of new unequal voting shares and failed.

Canadian Tire

The lengthy battle by the non-voting shareholders of Canadian Tire has been well documented in the press and i will not go into its details. The case however illustrates the value placed on the vote, as the bid by the Canadian Tire dealers for the voting shares was many times the price at which the non-voting shares traded in the market. The coattail provisions which the non-voting shareholders thought they had obtained did not work and only the intervention of the Ontario Securities Commission prevented the oppression of the non-voting shareholders. In the process, the non-voting shareholders gained board representation to safeguard their interests.

Inco

Inco's poison pill, the first such development in Canada, illustrated two issues:

A) a fundamental regulatory problem with the lack of proper shareholders' rights protection for Canadian companies in case of a possible acquisition of control outside Canadian borders. Such protection exists in Canada under the auspices of the Canada Business Corporations Act and various provincial securities commissions.

B) It also illustrates the simple fact that proposals by management to shareholders are very difficult to defeat even though they are oppressive to shareholders. In this instance, neither the efforts of the Canadian Council of Financial Analysts, including the use of the media, nor the objections of many institutional shareholders were successful in defeating the proposal.

Pegasus

The Canadian Council of Financial Analysts was afraid after the Inco experience that poison pills would spread in Canada. As a result, when Pegasus came up with an alternative with its shareholders' rights plan, we worked closely with the company to insure that the plan's features were such that they could serve as a model for future developments in this area. In essence, a shareholders' rights plan contains two features: a poison pill and a permitted bid. The plan is so structured that the poison pill does not come into effect if a bid is fair. Fairness is defined as making the bid equally to all share-

holders and leaving it open long enough for all to be able to take advantage of it.

With variations, all subsequent Canadian developments in this area have been of the shareholders' rights variety.

Steinberg's

The Steinberg's case illustrates the difficulties experienced by non-voting shareholders in the case of a takeover. The problem in this case was the impossibility of outside shareholders of establishing the asset value of their holdings without guidance from the company's board of directors. There was a fairness opinion provided by the board but, while, it indicated that the offer to class a non-voting shareholders was unfair, it did not identify relative to what it was unfair. The problem here lay not so much with the board as with the lack of regulatory definition of what a fairness opinion should contain. Theoretically, the bid could have been defeated if a significant proportion of the class a shareholders had refrained from tendering. However, the price offered was considerably higher than the market price, which not only prevailed before the bid, but was likely to prevail if the offer were defeated. Therefore, shareholders were put in a difficult position of having to accept a good bid, but one which did not fully reflect the value of their underlying assets.

The future

The future trend in corporate governance may well hinge on whether Canadian or U.S. Practice will prevail. Canadian institutional investors have historically held the view that the responsibility for the operations of companies rests firmly with the board of directors and that we will intervene only if there is a clear case of shareholder oppression which conflicts with our fiduciary responsibilities.

The current U.S. Trend appears to attempt to redefine the duties of directors to include not only the traditional role of enhancing the value of the corporation (usually defined as obtaining growing returns for shareholders) but also to pay heed to the interests of employees, creditors, customers and suppliers, as well as those of the community and, by extension, society at large.

This places institutional investors in a box: on the one hand our duty is to maximize investment returns so that we can pay the highest pensions possible and we are therefore driven to vote in favour of directors who can achieve this objective and, on the other hand, to pay heed to other objectives which may detract from this goal but which are seen as socially desirable, although not legally mandated.

Institutional investors are ill-equipped to deal with these inherently contradictory roles of society, to some extent because the sides are usually unwilling to outline the consequences of adopting the stance they favour.

Simply stated, any reduction in the rate of return on the assets in a pension fund have to be made up either by reducing benefits or increasing contributions.

The role of the institutional investor is simple to state.

1) He must pursue the goals laid down for him, which are usually stated as the achievement of the highest possible return on investment;

2) Because he exists in a competitive environment, he should participate in insuring that the regulatory environment provides a level playing field; and

3) He should invest within the existing laws, but not create them.

This last point is important. Institutional investors are not experts in running companies, or in determining the impact of various developments on the goals of society at large. If certain objectives are considered desirable by society, they should be legislated into effect. To force institutional investors to exercise their very considerable power over the corporate sector as shareholders is not only undesirable, it could be dangerous, in the sense that such decisions will be arbitrary, rather than internally consistent.

Conclusion

I hope I have given you a flavour of the issues faced by institutional investors. As I mentioned at the outset, we are fortunate that, thanks to the legal and regulatory environment in which we work, significant progress has been made in reducing the risks inherent in the investment process. I would be happy to answer any questions you may have.

PEGASUS GOLD INC.
SHAREHOLDERS' RIGHTS PLAN

The Canadian Council of Financial Analysts, the umbrella organization ultimately representing some 1600 analysts across Canada, announced that it has reviewed the Shareholder Permitted Bid Rights Plan of Pegasus. While opposed to "poison pill" restrictions on share transactions, it recognizes that steps may be taken by a corporation to protect shareholders against abuses arising from the different regulatory environments which exist across international boundaries.

The Council's preference would be for the Plan to be amended in order to shorten its duration from the ten years now contemplated and for its renewal to be subject to shareholder, rather than Directors' approval.

Subject to these reservations, the Canadian Council of Financial Analysts supports the Pegasus Permitted Bid Rights Plan, which it believes is in the interest of shareholders, particularly now that the Corporation has decided to submit the Plan to shareholders' approval prior to full implementation.

INCO Recapitalization Plan

The Canadian Council of Financial Analysts is the umbrella organization for analysts' societies across Canada, which in turn represent some 1600 financial analysts. We have examined INCO's recapitalization plan and have come to the following conclusions:

1. "Poison pills" are objectionable on principle and present particular difficulties for those with fiduciary responsibilities.

2. The CCFA applauds INCO Directors for taking the issue to a vote by the owners of the Corporation, as this is the proper forum where a decision should be made;

3. The CCFA recognizes that there is a fundamental regulatory problem with the lack of proper shareholders' rights protection for Canadian companies in case of a possible acquisition of control outside Canadian borders. Such protection exists in Canada under the auspices of the Canada Business Corporations Act and various provincial securities commissions.

We draw two conclusions:

a) We are against piecemeal solutions to the trans–border problems, that is, individual companies setting up protective barriers against possible uneven treatment of domestic and foreign holders of shares in Canadian corporations; and

b) We are in favour of attempting to find a "universal" solution through agreements with foreign regulatory authorities.

Although such a solution is well beyond the capabilities of the Canadian Council alone, we are prepared to work with others and will undertake to "get the ball rolling" by making representations to Canadian regulatory authorities.

STEINBERG'S

The Ontario Hydro Pension Fund is a significant holder of Steinberg A shares. We believe that the takeover process to date has been significantly flawed for the following reasons:

1. Outside shareholders have no way of establishing the asset value of their shares without guidance from the Company's Board of Directors. No appraisal of the Company has been provided by the Board of Directors and the outside "fairness" opinion, while indicating that the offer is unfair to Class A shareholders, does not identify relative to what it is unfair. We find it curious that one can make such a judgement without a benchmark.

2. In the absence of any facts, an outside shareholder is inevitably drawn to the conclusion that the only group possessing a good idea of the worth of Steinberg shares are the common shareholders. Furthermore, if a willing and knowledgeable owner believes each share is worth $75 and as both common and Class A shares are equal in the case of a break up of the Company, which is clearly what is happening, then the conclusion becomes that the benefit to the buyer is the difference between the amount paid for the common and Class A shares.

In other words, the deal is being done on the backs of the Class A shareholders.

The only conclusion we can draw from the facts made available is that, as a minimum, the value of the Class A shares is $58.85, representing the total cost of the Oxdon bid, divided by the number of common and Class A shares outstanding.

A Corporate Response to Shareholder Action

David Grier

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

This year marks the fifteenth anniversary of the founding of the Taskforce on the Churches and Corporate Responsibility. It was in 1975 that various Canadian churches came together to establish a co-ordinated vehicle for the examination of the policies and practices of business corporations, and the expression of Church positions on matters of corporate social responsibility.

Since that time, the Taskforce has engaged in dialogue -- and sometimes in argument -- with the managements of a considerable number of corporations about a variety of topics, with major emphasis on the issues of South Africa, and the chartered banks' approach to the Third-World debt problem.

As an officer of one of the corporations spotlighted by the Taskforce from the very beginning, I have had the task -- and sometimes it was a privilege, and sometimes, frankly, a pain -- of dealing with the Taskforce throughout that period.

I am happy to be here this morning to share some of my reflections on this experience, and more generally upon the question of shareholder representations to management.

Let me start out with a brief summary:

- On the whole, I would say the effect of these representations has been positive, rather than negative. The efforts of the Taskforce (and other intervenors) have stimulated and encouraged management to give thoughtful attention to the questions raised. On one occasion I even recall our happily accepting a suggested policy change!

- On the other hand, I regret that the manner and style of the representations have so often been basically adversarial. They have all too often seemed to proceed from an apparent assumption of disagreement between management and shareholders. I think management can be forgiven for reacting somewhat defensively when approaches made to them sound like accusations rather than inquiries and requests for informative discussion.

- I suspect that at least one of the reasons for this adversarial tone is that there has been a tendency to rely primarily on formal mechanisms -- appearances and statements at Annual Meetings of Shareholders, the filing of shareholder proposals for circulation in management proxy circulars, and so on. Such formal and legalistic approaches tend to elicit similarly formal responses -- and I feel this gets in the way of real dialogue.

I think this is particularly unfortunate when it prevents the intervenors from learning more deeply about the issue being discussed -- as they might, I believe, if the atmosphere were not one of formal meetings and negotiations based on legal privilege, process, or rights.

I believe that good managements are sensitive to the concerns and views of shareholders and other stakeholder groups, and are willing to meet and discuss all kinds of questions with them. But management

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In the early 1970s Mr. Grier drafted the Royal Bank's "Code of Conduct: Principles of Ethical Behaviour". He has also played a key role in the Bank's response to issues of corporate social responsibility including: bank lending to South Africa; Arab boycott clauses in letters of credit; equal employment opportunity and the role of women in the bank; language policy in Québec; money laundering; and the environment.

is going to be less responsive, informative and co-operative, rather than more, when these questions and concerns are put in a formalized legal manner. The legal processes of shareholder intervention remain available when management proves unresponsive and intransigent.

I should say here that I have no problem whatsoever with the basic legitimacy of expressions of Church views on matters in the business world, whether directly or through a coalition such as the Taskforce.

However, I have sometimes had problems with the substance of what is said, and the quality of the research and thinking that appears to have gone into the formulations of those statements. Sometimes church expressions have appeared to have a distinctly ideological bias; have appeared to proceed from a community of activism rather than from a community of religious, spiritual and ethical conviction; have been based on mistaken, superficial or erroneous research into the facts of the particular case; or, finally, appear to have been aimed more at building visibility for the sponsoring group than at any realistic prospect of changing the way things are done.

All of that having been said, I must admit that my own experience with shareholder activism in general has been limited in a couple of important ways:

First, I am a part of the management of a widely-held corporation in an industry whose regulating statute requires that it remain widely held.

It seems to me that the issues around shareholder representation are likely to be considerably different in a closely-held corporation. In closely-held corporations, I suspect, there is a continual tension, actual or potential, between the interests of the minority shareholders, on the one hand, and those of the controlling group, on the other. Thus the debate tends to centre on governance issues, and on such matters as takeover offers, leveraged buy-outs, "poison-pills", "golden parachutes", or issuance of debt or equity securities which may affect the value of the common shares in the short or long run.

Second, in almost every case in which I have personal experience, the basic issue being raised has not had to do with the relationship of the corporation and its shareholders, or between one group of shareholders and another. It has, instead, been about a social or political issue. Indeed, many of these issues, when they have been raised in one or another of our Annual General Meetings of Shareholders, have been raised not by those who were essentially speaking from the point of view of their financial interest as shareholders, but by those who had as their primary interest a particular view about the issue in question.

Thus when representatives of the Taskforce on the Churches and Corporate Responsibility, including on one occasion the Primate of the Anglican Church of Canada, have risen to speak at a Royal Bank Annual Meeting, the fact that the constituent churches of the Taskforce happen to own shares has, frankly, been incidental. The spokesperson would have been accorded the floor in any event, both out of courtesy and because of the importance of the issue being raised. If the church is a shareholder, that fact has been only one of the factors giving it leverage.

Now I will admit that such courtesy on the part of corporate management probably has its limits, and there might well be times when the chairman of a meeting of shareholders might deny the floor (or even entrance to the meeting) to would-be intervenors who have no shareholder status.

This leads me to invite you to reflect upon, and possibly discuss later this morning, the propriety and ethics of the tactic of an individual or a special interest group purchasing and holding some (usually limited) number of shares solely or primarily in order to acquire status (or as the courts would put it, "standing") so that the interest group may then use that status to proselytize, to promote and bring to public attention its particular social or political cause. What is really being sought is, of course, public attention for the cause and the group's views upon it, and, I suppose, one possible strategy for issue advocacy is a strategy of shareholding in prominent corporations.

I must tell you that I have some discomfort with an approach where shareownership is only incidental to the advocacy of a cause, where shareholder status is only an instrumental factor in a use of the corporate

governance and shareholder democracy system for social or political advocacy.

I do not, however, have any discomfort with shareholders using the system of shareholder democracy to express their views, and to persuade fellow-shareholders, when what is involved is actually company business, that is, an actual or potential corporate action or policy. It is, of course, entirely appropriate for shareholders to be concerned about how the corporation is managed, and to exercise their right to be heard in that context.

Basically, I am uncomfortable when I sense that what is really happening is that an interest group is using the system -- and the resources of all the shareholders -- to gain public attention for their particular cause. After all, inclusion of a shareholder resolution, with its justifying preamble and supporting statement, in a management proxy circular mailed to tens of thousands of recipients (to pick one example) is not without cost, and the cost is borne by all the shareholders.

Obviously this question -- what is an appropriate matter for consideration by the whole body of shareholders, and what is an inappropriate use of the system -- has no simple black-and-white answers, but has a lot of greys in it. In any event, it just might make for some lively discussion during this conference!Let me now add another difficult question to today's discussion: To what extent should the corporate governance system operate as a system of representative democracy, or to what extent should it become one of direct democracy?

It is my observation that, partially because of the trend to issue-based interest groups, and partially because of an erosion of public respect for and trust in all our institutions in North America, and possibly even because of the influence of television, we are seeing a rise in populism, an increasing desire for the mechanisms of direct democracy. I am speaking of the referendum, the plebiscite, the "citizen's forum" and the trend to governing by the latest polls.

Once upon a time we elected representatives based on our knowledge of their track record; their demonstrated intelligence, skill and judgement; and their professed approach to key issues. Once a representative was elected, we felt free to express our views and concerns to him or her, and we watched carefully what he or she did, but essentially we said: "This person was elected to represent me, so its his job to make those decisions. If I don't like what he does, I'll throw him out at the next election."

Today, I believe, there is a trend toward saying: "Many decisions are too important for my representatives to make. I don't trust them enough, so I want to make more and more of these decisions myself, through direct mechanisms such as referenda." As one example, I understand the ballot in California in the recent U.S. election was some twenty pages long!

Do we want this same trend in corporate life? On the one hand, should we continue to elect representatives to the Board of Directors, who appoint management, and let them get on with the job of managing? The Board will hold management accountable, and replace them if they get it wrong too often, and we the shareholders will do the same with the Directors, hold them accountable, and replace them if we have good reason to disapprove of what they do.

Or, on the other hand, do we want to bypass this representative system in favour of an analogue of the system of detailed political referenda on a wide variety of questions raised by individual shareholders or groups of shareholders? If so, to what extent and with regard to what questions?

I guess you know where my own preferences lie. Not because I think corporate Directors and people in management are looking for an easy life, but because I believe the representative system, on the whole and over time, works better, with more balance, wisdom and stability, than a direct voting system. This is certainly an important topic for discussion, however.

Finally, I would like to set out for you a philosophical paradox. It is this. The right of shareholders to determine and direct the activities and policies of a corporation is based on the concept of property rights. You own something, so you have the right to do whatever you like with it. Shareholders own the company, so they

have the right to do whatever they like with it.

This approach to the rights of shareholders is founded in the notion of the corporation as a single-purpose creation, that purpose being the making of a profit, or as it is more often expressed today, the "creation of enhanced shareholder value".

In this traditional way of looking at the corporation, there is no doubt that the shareholder is King. All other stakeholders -- employees, customers, suppliers, neighbours, communities -- are secondary instruments to the purpose of the shareholder. They are necessary to the fulfilment of the primary purpose, but are not a part of it.

Yet today, partially because of the efforts of such advocates of corporate social responsibility as the Taskforce and the University of Toronto's Centre for Corporate Social Responsibility and Ethics, there is wide currency for a somewhat different way of thinking about the purpose of the corporation. Indeed, many believe that while profit is a necessary condition for the continuance of the corporation, it is not a sufficient condition. In short, the pursuit of profit is not, nor should be, the sole, ultimate or most fundamental purpose for the corporation. Let me elaborate.

Despite traditional rhetoric, a corporation is, willy-nilly, a co-operative system. It is a dynamic system, governed, in the end, by feed-back signals from the various members of or participants in the system. Capital owners, employees, consumers, suppliers and the community-at-large all have a stake in its operations, and, in effect, co-produce its products. Owners risk capital and expect to be paid fair profits by way of dividends and capital appreciation. Employees supply energy, knowledge and imagination in return for wages, benefits and various psychological rewards. Consumers provide the essential revenue out of which come wages and profit, as well as a variety of information inputs as to what goods and services and modes of delivery best meet their needs and desires. In return consumers receive the goods and services which are the system's "products".

The community at large provides a variety of infrastructure elements, as well as the regulatory rules under which the business must operate and, most important, society's "permission" to the business organization to operate at all. In return, the community (represented and symbolized by government) receives the social good represented by the existence of the business, protection against specific dangers identified in laws and regulations, the overall economic benefit of the business activity (job creation, for example) and finally but not least, tax revenues.

Now a key point, made eloquently by Douglas Sherwin in an article in Harvard Business Review, is that "What is often-times not appreciated even by the members themselves, is that the system's members are interdependent. Together, and only together, can they produce the outputs they subsequently share. What each member receives is constrained by what other members require, and no member can in the long run enjoy a disproportionate share".

Sherwin continues: "Besides being interdependent, the members of the system are entirely equal in importance. Business people often claim primacy for capital, perceiving it as the fuel of enterprise, while consumers tend to assume that the whole point of business is to provide them with goods and services. But no member of a system can be primary. Since the contribution of every member is necessary, and no [single] contribution is sufficient, the members are equal [in importance]".

To the owners of a company, the purpose of the business may well be to yield them profits and appreciation of capital. To employees, its purpose is to provide meaningful work and afford them a living. Consumers see its purpose as furnishing them goods and services. And so on. Each stakeholder has his or her own "purpose" for the existence of the company. But like the blind men of India examining the elephant, their fragmented and differing points of view do not account for the whole animal. In my view, it is only from the point of view of the whole society that the nature of the animal, and therefore its most fundamental purpose (if that is by now a meaningful phrase), becomes evident. So the purpose of business becomes "all of the above", a combination of the purposes it serves for all of its stakeholder groups.

The implication of this for management is that the task of the manager (and I include the Directors in this) becomes that of a Solomon, continually balancing the legitimate claims of the firm's stakeholder groups, and a steward of their differing (indeed, sometimes conflicting) interests.

For the moral manager and the moral Director, therefore, to consider the "purpose" of the corporation in a narrow or singular way is, I suggest, to fall into the trap of over-simplifying. Viewed whole, the task can only be characterized as the ethical discharge of a wide range of responsibilities to a wide range of stakeholder groups, not just to shareholders.

Too often, I would submit, managers fail to remain fully conscious of this. And if that is true of managers, it is also true of shareholders. The paradox I referred to earlier is that if the very shareholders who urge social responsibility upon the corporation are in doing so relying primarily upon the supremacy of their legal property rights as the owners of the enterprise, they are, in the moral sense at least, trying to "have their cake and eat it too".

What are the implications of this? Well, for one thing I would say that while the shareholder undoubtedly does have a special legal right to participate in the corporate governance process, it can be argued that morally this right cannot be an exclusive one. Surely, the other stakeholders have a similarly powerful moral right to express themselves and to be heard. And management has the obligation to listen and be accountable for responsible judgement.

All that having been said, I will end by indicating again that, on balance, I feel the representations of such shareholder responsibility groups as the Taskforce on the Churches and Corporate Responsibility have had positive and constructive effects in the corporate world. There is little doubt in my mind that the activities of the churches as shareholders have encouraged and accelerated the already lively debate within the business community about issues of social responsibility, the purpose of the business corporation, and, indeed, the ethical roots of business activity.

Thank you.

Active Shareholdership: A Viable Strategy for Labour

Bob Baldwin

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

I want to begin by thanking the conference organizers for inviting me to participate in today's conference and Professor Brooks for his kind words of introduction.

I am honoured to be here. But,I also have to admit that I am also somewhat intimidated by the topic I have been asked to address and the audience to which I have been asked to address it.

As I began to think about the topic, I initially thought of the Canadian labour movement as a "new kid on the block" with respect to shareholder activism. Then I realized that the Canadian labour movement is not even clearly on the block. I will not be speaking from the vantage point of a wealth of trade union experience in active shareholdership.

Then when I looked at the list of speakers and panellists for the various sessions, I got the feeling that I would be in a situation that would be like presenting labour' views on modern Canadian literature to Margaret Atwood. I am speaking to an experienced audience. Then again, I suppose that these initial sources of personal discomfort are part of the reason why it is worthwhile having someone from the labour movement address the question whether active shareholdership is a viable strategy for labour.

Among the obvious questions that spring to mind are: why hasn't the Canadian labour been more involved in active shareholdership - especially when so many of the ethical causes being espoused by active shareholders are supported by labour? And, are there any reasons for believing that the Canadian labour movement will be more involved in active shareholdership in the future.

Since this is not a dramatic presentation, I will set out the main propositions on which I will elaborate in the rest of my remarks:

First, active involvement in the investment process in any fashion, including active shareholdership, requires the transcending of certain elements in the history and culture of the trade union movement;

Second, notwithstanding that reality, a number of circumstances are forcing the trade union movement into a more active role in investing;

Third, it is almost inevitable that the Canadian trade union movement will become more involved in active shareholdership; and,

Fourth, whether active shareholdership becomes a viable strategy for labour, will depend on how labour defines the object of the exercise, and how labour organizes itself to be an active shareholder

Before I begin my elaboration on these points, it advisable that I offer the standard caveat the views that I am going to express are entirely my own. They can be rebroadcast and retransmitted without permission, but they cannot be attributed to

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my employer.

The first proposition that I want to discuss, is that the active involvement of the trade union movement in the investment process in any fashion, including active shareholdership, requires the movement to transcend elements in its history and culture. In elaborating on this let me begin with the obvious. Historically the core activity around which Canadian trade unions came into existence, was the organization of workers into unions for the purpose of negotiating collective agreements with employers. The range of activities in which trade unions engage has expanded greatly over the years. Nonetheless, collective bargaining remains the focal point of trade union activity, and the main determinant of its internal culture and organization.

The collective bargaining process itself has certain attributes that are worth noting in view of the subject before us.

It is on the one hand both a pragmatic and subtle process. Bargaining proposals and final agreements have to address the diverse needs of heterogeneous union memberships. Proposals have to be framed so as to create scope for bargaining without being totally unrealistic. It is a process that, by its nature, involves compromise without capitulation. And, it is a field in which incrementalism is widely accepted. At the same time, there is a culture that surrounds the process that admits of no ambiguity - especially about who are the good people and who are the bad ones. No matter what one might think in the abstract about this element in the culture of bargaining, it is no mean feat to hold a large and diverse group of people together in a fight that may require significant economic sacrifice. It is especially difficult when the prevailing social values are generally undermining union efforts. In practice, the trade union movement has been well served by the culture that has grown up around collective bargaining.

These elements in the history and culture of trade unions, have created a certain awkwardness as trade unions have expanded their spheres of activity.

The awkwardness revolves around two points in particular, and a third that is largely a derivative of the first two. The first and most important source of awkwardness is that the categorical element in the bargaining culture does not fit cleanly with a good deal of non bargaining activity. It fits well with attacks on Brian Mulroney, but it does not fit so well with, say -participation in a joint labour/business decision-making body. Nor, at the risk of stating the obvious, does it fit all that clearly with the direct involvement of trade unions in investing.

The second source of awkwardness in the non- bargaining area stems from a lack of certainty about what constitutes success in non-bargaining activities. I mentioned with respect to bargaining, that incrementalism has come to be accepted. For instance, it is generally accepted that a particular round of bargaining is not going to result in everything that is being sought, and that a number of rounds of bargaining may be required to accomplish something approaching the desired objective.

This type of consensus does not exist in the non- bargaining areas of activity. Many a lively debate about possible courses of action outside the bargaining arena, revolve around differing views of what are reasonable outcomes of these activities. There is not a consensus that incrementalism is acceptable in the non-bargaining sphere.

The third source of awkwardness that is a derivative of the first two, is a problem of the allocation of trade union resources-especially leadership time and resources. There is never enough time and resources for existing activities. Given the awkwardness that prevails with regard to non-bargaining activity in the first place, selling the allocation of resources to an investment project can be a "tough sell" - even to a leader who has no philosophical aversion to the idea. The leader has to be convinced that it is worth diverting time and resources from other activities.

As I said, there are historical and cultural elements in the trade union movement that have to be transcended, if Canadian trade unions are to be active participants in any type of investment projects, including becoming activist shareholders.

If my elaboration on the first of the propositions has left you feeling somewhat pessimistic, then my elaboration on the second proposition may reverse the emotional

field. My second proposition is that a number of circumstances are pushing the Canadian trade union movement into direct involvement in investment projects of one type or another.

In view of what I have said thus far, it is nothing short of remarkable that investment funds that are controlled by trade union organizations, or are jointly controlled by trade union organizations and business representatives, are receiving active and generally favourable consideration in all parts of Canada.

As I am sure almost all of you are aware, the Québec federation of labour established a venture capital fund in 1984, known as the "Québec solidarity fund". The "solidarity fund" was set up in the hope that its activities would help to preserve and create jobs in the province of Québec.

Within the Canadian trade union movement, but mainly outside Québec, the "solidarity fund" has been very controversial. Nonetheless, the "solidarity fund" has inspired a great deal of thinking about alternative types of worker investment funds. Thus, for example, the Manitoba federation of labour has developed a plan to create a worker buyout fund, that would focus much of its investment activity on family owned businesses that have no successor plan. This target was chosen because these firms are particularly vulnerable to acquisition for the purpose of closing them down. One important feature of the Manitoba plan is that it contemplates the transfer of ownership from the fund to the employees of the firm.

The Ontario federation of labour presented the former government of Ontario with a proposal to create a social investment fund that would invest in social housing, environmental technologies and community economic development projects.

Finally, and maybe most importantly, pension funds in British Columbia that are jointly trusteed by union and management representatives have created vehicles that invest pension fund money in both social and moderately priced housing. These initiatives have been instigated by trade union trustees. I describe them as potentially the most important, because they are the first signs of active trade union involvement in defining the precise shape of pension fund investing in Canada. As I am sure you are aware, the amounts of money at stake in the pension fund investment field are enormous. Underlying these proposals and initiatives, there are a number of forces at play that vary somewhat between the pension and non-pension fields.

In the non-pension area - i.e.. in the realm of the "solidarity fund" and Manitoba proposal - we are witnessing an acute short term frustration with what -governments and conventional businesses are willing and able to do about the deteriorating employment situation in Canada. For many trade unionists - especially outside of central Canada, the experience of the eighties has created a new willingness to contemplate roles for the trade union movement in creating employment.

Although the longer term significance of these funds in relation to government initiatives and conventional business is seldom articulated explicitly, they are implicitly viewed as antidotes to conventional business and complements to government initiatives.

What is animating events in the pension area bears some similarity to what I just described. But, there are some important differences too.

As of 1988, there were 350 multi-employer pension plans in Canada with a total membership of roughly 680,000. In virtually all of these plans, union representatives already share the legal responsibility for pension fund investments. Traditionally, both union trustees and management trustees have tended to be rather passive players in the investment decision-making process. The major decisions have been left to investment professionals.

What the union trustees in British Columbia have expressed in practice, is a sentiment that pension fund investments could make a much greater contribution to fulfilling the social and economic aspirations of union members, if union representatives start to play an active role in directing pension investments. The implicit criticism of the lack of concern for the economic and social consequences of investments made by conventional fund managers, is is a widespread sentiment in the Canadian labour movement. at this

time it is difficult to anticipate the future of worker controlled investment funds like the "Québec solidarity fund" and the proposed Manitoba fund. However, I think it is almost inevitable that there will be a significant growth in the years ahead in pension fund investment vehicles that are run solely or jointly by union representatives.

There are a number of economic and political forces at work that make jointly trusteed multi-employer plans an increasingly attractive option. And, there is much less concern within the trade union movement about the creation of pension fund investment vehicles than there is about some of the alternatives.

The third of the propositions on which I want to elaborate, is that it is almost inevitable that trade unions will become involved in active shareholdership.

It has to be acknowledged, once again, that the Canadian labour movement has not become a player in active shareholdership to this point in time. There may be some isolated examples of trade union involvement in active shareholdership, but they have made little or no impact on the movement as a whole. That having been said it is striking that Canadian trade unions are actively involved in creating institutions in which they will be very active shareholders, even if they are not activist shareholders in the conventional sense. Institutions like the "Québec Solidarity Fund", the proposed worker buyout fund in Manitoba, and the pension fund vehicles in British Columbia are not being set up to be passive investors. Their whole point and purpose is to have a decisive impact on the companies in which they invest.

Active shareholdership in this non-conventional sense will undoubtedly grow in the future. There are going to be more jointly trusteed pension plans in the years ahead. And, they will increasingly become involved in creating new, and specialized investment vehicles that are designed to insure that pension investments reinforce the economic and social aspirations of the members.

At this point in time, I find it difficult to imagine shareholder activism in the conventional sense becoming a strategy that is preferred to the creation of specialized investment vehicles, or for that matter ethical screening. Nonetheless, the growth of jointly trusteed pension plans will almost inevitably lead to a trade union role in conventional active shareholdership for two reasons.

First, the need to protect the financial interests of non-controlling shareholders is turning traditionally passive pension fund investors, into activists. Thus far this conversion appears to be led by, if not dominated by, the institutional fund managers. In the years ahead pension fund trustees will be more actively involved in this process, and trade union trustees will find themselves on the active shareholdership block - almost in spite of themselves.

Second, the financial motive for becoming activist shareholders will be reinforced by a combination of growing demands from trade union members that ethical concerns be reflected in pension fund investments, and the limitations on divestiture as a way of implementing that concern.

In short, both the financial and ethical motives for active shareholdership will begin to animate trade union trustees. I should make it clear, however, that my belief that an active shareholder role for the Canadian labour movement is inevitable, does not mean that I foresee an instant transformation of labour's role in this area.

The fourth and final proposition on which I want to elaborate is that the viability of active shareholdership will depend on how the labour movement defines the object of the exercise and on how it organizes itself to be an active shareholder.

Bearing in mind what I said earlier about the lack of a clean fit between the culture that has grown up around collective bargaining and active shareholdership, there are several points to be made about the last of my four propositions.

The first is that the trade unionists who are involved in promoting active shareholdership will have to be very careful in creating an achievable set of expectations about what can be accomplished through active shareholdership. As simple as this might sound, it is important to recognize that this is a consideration that competes

with the requirement of selling the strategy politically. It is also a consideration that is in a degree of conflict with the fact that incrementalism is not fully accepted outside the sphere of collective bargaining.

As difficult as it might be to create achievable expectations, exaggerated expectations will create an inevitable and richly deserved backlash.

It is not only important that expectations be reasonable in terms of their overall proportions, but they have to be selective in terms of their substantive focus. In particular it will be important to avoid targeting the outcome of collective bargaining as an area that active shareholdership is designed to influence. The conflict of interest to which union shareholders would be subject, and the clash with the culture that has grown up around collective bargaining will strain the active shareholdership strategy to the breaking point. In substantive terms, the issues with respect to which active shareholdership is likely to be most viable for the- trade union movement, are issues that the movement wishes to address in public policy forums. In this context shareholder activism would be used to reinforce and highlight efforts that are being made on other fronts as well.

One of the issues that will also have to be considered is how the trade union movement wishes to organize it self to be involved in shareholder activism. If, as I suspect, the initiative is organized primarily around pension fund investments, there are prosaic organizational issues like the need to create information systems for pension fund trustees. However, the larger and more interesting issue is the extent to which union trustees enter the field of shareholder activism on their own, versus the extent to which they do it as part of a more widely based effort that involves non-labour groups.

There are points to be made in favour each of these options. In view of all that I said in elaborating on my first proposition, it might be prudent for the trade union movement to pursue shareholder activism through an umbrella of like minded groups.

To summarize:

- The Canadian trade union movement has not been involved in active shareholdership,and elements in its history and culture have to be transcended if it is to become active;
- Nonetheless, there are forces at play that are pushing the movement in the direction of shareholder activism;
- The movement in this direction will not be swift and it will be surrounded by internal controversy;and finally,
- movement in this direction will likely be accompanied by a search for allies outside the labour movement.

Thank you for your time and attention.

Approaches to Management: Roles of Members and Trustees

Thomas A. Stavovy

The Endowment is permanent capital of the university contributed by alumni and other benefactors to support the university's central academic mission. The value of the Endowment as of June 30, 1990, was approximately $2.6 billion, of which slightly less than half was publicly traded equity of United States companies.

Ethical investment and proxy voting are addressed separately but not in isolation from investing for total return and voting corporate governance proxies. Investment policy is made by the Investment Committee, a standing committee of the Corporation, in consultation with the Investments Office. The equity portfolio is managed primarily by external firms, which are selected on the basis of investment expertise. Corporate Governance issues are voted by the Investments Office based on policy and guidelines approved by the Investment Committee.

Ethical investment policy is made by the Corporation in consultation with the Corporation Committee on Investor Responsibility (CCIR), a standing committee of the Corporation. The CCIR also reviews social proxy voting recommendations and has the final determination of Yale's vote. Membership of the CCIR consists of six Fellows of the Corporation and the president of the university. The CCIR typically meets formally 2-3 times during the year.

Proxy voting recommendations are made by the Advisory Committee on Investor Responsibility (ACIR) The ACIR may, on a case by case basis, recommend correspondence in conjunction with proxy voting. The ACIR may also be directed to consider and recommend to the CCIR that the university take a position or action as shareholder on a social issue. The ACIR Is the workhorse of the ethical investment and proxy voting process and a means of participation in the process by members of the university community.

The ACIR has eight members appointed by the president of the university and drawn from different constituencies of the university community. The ACIR membership is composed of a graduate student, an undergraduate student, two alumni, two members of the faculty, and two employees of the university. Members of the ACIR are invited to serve on an annual basis and may serve multiple terms. In practice, the membership turns over about every 3-4 years, providing continuity and new voices.

The proxy voting process is dynamic and effective, resulting in deliberate, measured university responses to numerous social proxy resolutions which could not be individually considered and voted by the full Corporation. The proxy resolutions provide a broad agenda of social issues for discussion. The proxy voting process provides for input from diverse university constituencies, fresh examination of proxy issues each year, in-depth consideration of selected issues, a policy context, and historical continuity in actions.

Most proxy voting recommendations are formulated at weekly meetings from the end of March through the beginning of May. The recommendations are transmitted by the Investments Office to the CCIR, which then has an opportunity to respond. In practice, the CCIR has not rejected ACIR recommendations, and the university has voted as recommended by the ACIR. During the year, the ACIR chairman and the CCIR chairman communicate directly and informally, and there may be one joint meeting between the ACIR and CCIR and other members of

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the Corporation.

Because proxy votes are a Corporation responsibility, the timely communication of proxy voting recommendations to the CCIR is an important link in the process. It facilitates delegation by the Corporation to the ACIR the work of considering a large volume of individual social proxy resolutions. Without the ACIR, the university would not be in a position to consider and vote on each and every one of the social proxy resolutions with which it is presented. University correspondence with portfolio companies in conjunction with proxy voting plays an important role. It may communicate about a social issue where the university does not have a formal policy but where there is concern and a feeling that the company's actions can have a positive impact. The university may communicate concerns about issues raised in the proxy materials while not finding that it can support the resolution. The goal is to engage companies frankly and constructively and to avoid adversary tones.

Recommendations by the ACIR regarding proxy voting letters are reviewed by the CCIR. The Investments Office sends the letters and receives and distributes responses to the ACIR and CCIR members. Many letters are answered. Company responses are resources in future proxy voting deliberations by the university. In general, proxy correspondence raises company awareness of the university's views as a shareholder in the company. Company responses are evidence that proxy voting correspondence is taken seriously.

Correspondence with companies also communicates policy with respect to South Africa and provides an opportunity for compliance. An important distinction between policy correspondence and proxy voting correspondence is that policy correspondence carries with it the weight of potential divestment. The purpose of the policy correspondence is to make the policy and consequences of non-compliance clear and to provide the company with an opportunity to comply or face the consequences. Although divestment has not been shown to hurt a company's stock price, company managements generally prefer their stock to be bought rather than sold, raiders notwithstanding.

The deliberations of the ACIR and the CCIR are informed by research, analysis, policies, the record of prior deliberations and actions, and personal opinions of members. The university obtains research and analysis of issues and companies primarily from independent external sources. Other sources include individual members of the Yale community and portfolio companies. On an extraordinary basis, the work of the university may include significant travel and fact finding. In 1986, a 10-member university delegation comprising Corporation Fellows, ACIR members, and other faculty and staff visited South Africa in order to gather information and impressions of the impact of U.S. Companies operating there.

The university's actions and policies addressing ethical investment and proxy voting go back over twenty years. The university first exercised shareholder rights in the context of social issues in 1970 by abstaining on two resolutions proposed by The Project on Corporate Responsibility to the management of General Motors. The resolutions called for creation of a shareholder committee on public policy and expansion of the board to permit election of directors experienced in ecological, minority, and consumer issues. The management of General Motors opposed the resolutions. By abstaining on the resolutions rather than voting with management, the university had broken the "Wall Street Rule," which said that shareholders should always vote with company management.

In 1972, the Corporation adopted "Suggested Guidelines for the Consideration of Factors Other than Maximum Return in the Management of the university's Investments." The guidelines contained criteria and procedures by which a university could respond to requests by members of its community that the university take into account factors in addition to economic return when making investment decisions and exercising shareholder rights. The guidelines were set forth in The Ethical Investor - universities and Corporate Responsibility, written by Yale professors John Simon and Charles Powers and by Jon Gunnemann, and published in 1972 by the Yale university Press.

In 1978, the Corporation adopted the "Ethical Investment Policy and South Africa," which held that U.S. Companies could have a positive role in South Africa. The policy's basic requirements are: (I) A portfolio company operating in South Africa must receive one of the two highest ratings of implementation of the Statement of Principles for South Africa or publicly announce plans to withdraw from South Africa. (2) A portfolio company operating in South Africa must not provide strategic assistance to the South African government's policy of apartheid. (3) A portfolio bank must not make new loans or increase loans to the the South African government. Companies are informed of the requirements. If a company does not fulfil them, the university will divest the company's stock.

In 1989, the Corporation adopted the Statement on Proxy Resolutions. The Corporation believes that votes affirmatively supporting proxy initiatives should be preceded by a determination that the issue is one on which it is appropriate for the university to take a formal position as a shareholder. The CCIR, in consultation with the ACIR, may recommend to the Corporation guidelines for proxy issues on which it is appropriate for the university to take a position. The university does not sponsor social proxy resolutions.

Roles of Members and Trustees: Personal Reflections on the Experience at Queen's University

Bruce Buchan

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Note: The views expressed are those of the Author and do not necessarily reflect the views of the University or any of its stakeholders.

Introduction:

In the spring of 1977 (March/April) Queen's university was jolted into the modern realities of pro-active "Investor Responsibility" by two letters: one from the Taskforce on the Churches and Corporate Responsibility and the other from a Queen's professor actively involved in Amnesty International. They wrote the university asking Queen's, as a shareholder in Noranda Mines Ltd., to oppose that company's decision to examine the feasibility of investing in Chile. They were concerned because of the atrocious human rights record of the Pinochet regime in Chile. The letters, which were read as two of a number of communications received by the Board, were discussed at length but The Board's response was relatively short and simple; as an institutional investor we did not get involved in management decisions. This was not an acceptable response for the faculty member nor other members of the Kingston Chapter of Amnesty International, especially its President who was also a Queen's student. Letters were written to the Principal, petitions were circulated, a student group called the Committee of Concern for Chile was formed, a referendum was held asking "Should Queen's university, as a shareholder in Noranda Mines Ltd., oppose the investment by Noranda Mines in Chile on the basis of the serious violations of human rights by the Chilean Government?" The matter was also debated in Senate which was most unusual since there had always been a clear distinction between academic matters (Senate jurisdiction), and financial matters (Board jurisdiction). The Senate passed a motion in January of 1978 which stated that; "Senate, on moral grounds, urge the Board of Trustees to oppose, by whatever means available to it as shareholder, the Noranda Chilean investment."

In the meantime the Board of Trustees had set up a special committee to look into the matter and to "propose a policy regarding social responsibility and investment decisions." On the committee (The Rogers Committee) were representatives of the Board, the students, and the faculty.

The formation of the Committee, its recommendations, the subsequent procedures adopted for responding to Social Responsibility and Queen's Investment Policies, reflect the unique circumstances of an academic institution but do provide lessons for other institutional investors and perhaps even Corporations.

Looking back over that experience it seems to me there are Four Fundamental Questions that need to be addressed (and probably have to be considered by all institutional investors) and a Fifth question which should be explored in retrospect.

I MISSION: what is the mission of the Institutional Investor? Of the company in which you hold shares?
II STAKEHOLDERS: who are the stakeholders in the Institution?
III LEGITIMACY: what is the nature and the source of the legitimacy of the Institution?
IV FAIR VS. UNFAIR ACTIONS: Can we differentiate between fair and unfair tactics by the Institution? and
V RESULTS: what have shareholder actions accomplished so far?

Bruce Buchan joined the faculty of the School of Business at Queen's University in 1969, where he teaches in the area of strategic management and business history. He studied engineering and business and was an economic analyst for a major petroleum company prior to his first university appointment.
From 1976 to 1986 he held a senior administrative position in the university as Executive assistant to the principal. In this capacity he was involved in the founding and subsequent activities of the Board's Social Responsibility Committee (SRC).

I MISSION

As an institution the university is "a Centre of learning and free enquiry", its mission is to expand society's knowledge through research and to disseminate that knowledge through teaching and writing.

Its role as an institutional investor is clearly secondary and incidental to its primary responsibility; unlike, for instance Financial institutions such as the Insurance companies. Nevertheless, thanks largely to the generosity of our Alumni, we did acquire a significant endowment fund, some $150 million dollars (small by the standards of some of the large American private universities, e.g. Yale's $2.6 billion dollar endowment). Our Board of Trustees had as one of its major responsibilities to invest those funds wisely (i.e. to maximize the return consistent with the risk involved) and to allocate the moneys so as to help fulfil the university's mission. The task of investing was left to a professional investment agency. The university had neither the time nor the expertise to manage the portfolio. The issue and the decision was "purely economic". Social issues did not emerge as a factor for Queen's until, as mentioned above, 1977. When they did two problems arose; (1) How did we get the facts in order to deal with these complex social issues in a responsible way and (2) how did we safeguard individual freedoms and the right to hold differing views among members of the academy? These were issues which had been faced by numerous institutions south of the border and they had already established the Investor Responsibility Research Centre in Washington D.C.. Queen's became the first Canadian university (possibly the first Canadian institution) member of the IRRC and also invited one of its directors to come to the campus to explain the role of the IRRC and what were some of the current developments in Investor Social Responsibility.

To safeguard individual freedoms we avoided statements solely attributable to Queen's university as an institution, but facilitated the efforts of various constituencies e.g the AMS (the student government), the Committee of Concern for Chile, to make presentations to the corporation describing their concerns; e.g. to meet with the executives of Noranda Mines and to explain their concerns over Noranda's involvement in Chile.

A special committee of the Board, The Committee on Social Responsibility (CSR) was established "to receive expressions of concern on matters of social responsibility". The responsibility for deciding votes on proxy issues was left to the CSR which had representatives from each of the university's stakeholders (The Board of Trustees, alumni, students [undergraduate and graduate], faculty and staff).

Through the CSR we involved our stakeholders, stayed in touch with concerns on campus and arrived at decisions, and took actions on matters relating to Social Responsibility in our investment portfolio.

There was also an obligation to know the Mission of the Corporations in which we invested if we were to judge their conduct fairly. For example, should we insist that Dow Chemical withdraw from South Africa? It did not manufacture any products in South Africa but did have a sales office and warehouse in Johannesburg. The company's largest dollar-volume product in that country was "Rifampin", a pharmaceutical used in the treatment of tuberculosis; it was indeed the drug of choice for TB, which occurs rarely among the white population but very frequently among the blacks, averaging about 100,000 cases annually. The product was sold to the South African government for the treatment of TB in South Africa. The company had a black employee in South Africa who spent most of his time teaching Blacks about TB and how to avoid it.

In addition, the company was a signatory of the Sullivan Principles, (now called the "Statement of Principles") and it had adopted a school in Soweto, which the company's employees helped to upgrade. It also contributed bursaries to the university of the Zululand, and the Pace College in Soweto, as well as a variety of other activities. Was this the kind of company we were to persuade to pull out of South Africa?

Nevertheless, the strongest movement on campus was for a strict divestment policy, i.e. to insist that all companies leave South Africa (disinvest) otherwise the University would divest. For a long time the committee resisted this approach. Undoubtedly it was influenced by the conduct of companies such as Dow. Divestment was an option and indeed was practiced on a selective basis, but it was

resisted as the ONLY course of action. In addition we could and did encourage the companies to reject apartheid in their own jurisdiction (by adopting the Sullivan principles) and by lobbying the government to change its regulations. However, the only acceptable solution in the eyes of a very vigorous, determined lobby, was to divest of any company with operations in South Africa, and Queen's did so several years ago.

I believe the United Church followed a similar route but at an even earlier date than Queen's. I will have more to say about this aspect when I consider the fifth and final question, what have been the results?

II STAKEHOLDERS

Who are the stakeholders (the major constituencies of the Institution affected by its actions)?

To the extent possible we found it necessary to involve each of the university's major constituencies. Since each was affected by the decisions of the committee each had an important role to play. The representatives were chosen by their constituencies e.g. the Faculty Association appointed the Faculty member the Student governments their representatives. Although I personally disagreed with the divestment policy I respect the membership of the committee and therefore am willing to accept the decision of the committee and the Board of Trustees. The process helps gain wide acceptance even when one's views may differ. This is particularly important in the political environment of a university but I suspect it applies to most large institutions.

Which brings me to one of the questions raised in the brochure distributed for this conference; "How are institutional investors to respond when management makes decisions which "offend the values of the fund's members?" Perhaps you have more unified values in your institutions than we do in a university but regardless you have to develop a procedure which allows those values to be identified and then you have to have a mechanism for conveying those concerns to management. As a shareholder, as a stakeholder in the company, you can usually expect to get access to top management. Will they defer to your views? Should they? They will almost certainly listen to your concerns but whether they will act on them is problematical. You are only one of a large number of shareholders, and an even much smaller number of stakeholders, to which management must pay attention. But one of the factors which will influence management will be the nature and extent of your "legitimacy".

III LEGITIMACY

From where does the Institution get its legitimacy?

Clearly, the size of your investment will have an influence on management. However, I think there is another more important factor and that is the basis of your social legitimacy. For example, the TCCR, a coalition established by the major Christian churches receives its legitimacy from that group. It would be perceived to have a legitimate concern, indeed responsibility (perhaps even a certain degree of "expertise") regarding moral and ethical values and standards in our society. Hell's Angels, even though they had an equal or even greater investment would not receive the same recognition on social issues. I'm not sure whether universities would be seen as having any special status on moral or ethical grounds (the rampages of our students at homecoming tend to diminish our credibility, and place us in a category closer to that of the Hell's Angels!!). However, to the extent large numbers of executives tend to be university alumni, and there are individual faculty members who are recognized for their expertise, and our Board of Trustees are sprinkled with notable members of the Corporate world, I suspect expressions of concern emanating from the university might receive some favourable attention. However, I do believe that those views must be presented with appropriate respect for the Corporation, its officers, and employees. Any sympathy from the Corporation would be lost quickly if the Institution's representatives instinctively regarded the Corporation as one of the enemy. The Investing Institution must do its homework and be well prepared when approaching the Corporation. This was one reason why it was so important to establish an organization such as the IRRC which could carry out the necessary investigations into social issues. I believe there is also an onus on the Institution to carry on a dialogue with the Corporation in order to understand its point of view. The co-operation we received from virtually every company with which we carried on

correspondence was invariably constructive, friendly and valuable. I can think of only two instances were the response was less than helpful, verging on disdain and the committee re-acted accordingly, and recommended divestment.

This raises the question as to whether or not there are actions by Institutions which might be considered unfair?

IV FAIR VS UNFAIR PRACTICES.

I think there are two important questions in this category: Is it fair to threaten divestment if companies do not disinvest? Is it fair for large institutional investors to throw their economic weight around?

The threat to divest is unfair if it is the only policy used by the institution and used in all situations. We illustrated the case of Dow supplying a critical drug to black South Africans. Each situation should be considered independently and judged on its own merits. The objectives should be clearly defined (get rid of apartheid), the methods of combating should be as diverse as possible and management should be encouraged to implement as many as feasible; the threat to divest should only be used when unco-operative management is encountered, and when all else fails.

Corporations and management should be held accountable for their actions; for areas over which they have responsibility. However, should the corporation be held responsible for actions over which it has no control? e.g. government legislation? Should the Bank of Montréal, for example, be held responsible for the Québec government's decision to ban English signs in Québec (bill 178)? Should you divest from the Bank of Montréal if it doesn't withdraw from Québec? To discriminate against someone because of their language must "offend the values of many fund's members". Is this sufficient reason to threaten divestment? To impose other sanctions? For the Institution to throw its economic weight around? Which raises the second question. Is it in the best interest of society to concentrate "shareholder" power in the hands of a few large Investment Institutions? Do we want this "select few" to determine when the values of management are acceptable and when they are not? Who is to say that Institutional Investors have more claim to or possess a "higher" moral standard than the Corporation? Do we want financial institutions to determine what is in the best interest of all shareholders? There is already widespread concern that Institutional Investors are forcing management to focus too much on the short-tern thus threatening the long term viability of the Corporation. Japanese managers, such as Akio Morita of Sony, suggest this is the reason for the decline of North American industry.
I won't attempt to answer these questions, but I think they are important and should be considered by members at this conference.

Finally then to address the Fifth question, what have we achieved in the last decade or so? Has the divestment movement had any impact?

V RESULTS

Some 17 months after the university adopted its South African divestment strategy Queen's calculated the cost. It was estimated that the endowment fund lost over $1,000,000 in the divestment process (i.e. the fund would have been more than $1,000,000 greater had the university not divested). Some believe that "clean funds" are more profitable. I can appreciate that "clean funds" can be profitable, perhaps even very profitable, but I can't see how you can be more profitable when you are forced to select from a smaller set than a person who can select from that set plus more!

Is South Africa and are South African blacks better off now that companies such as Polaroid, Ford and Coke are no longer controlled by North American managers? Now that there is no pressure to be brought to bear by North American managers subject to the standards of conduct established in North America? Undoubtedly there are many companies which decided to forego something under 1% of their profits from their South African operations in order to protect the other 99% of their earnings. It makes good economic sense, but is it socially responsible? What do the former employees of Polaroid think?

Is there such a thing as social responsibility or does it all boil down to economic utilitarianism and are those Institutional Investors with "economic" clout simply going to polarize the situation even more? I wonder! I am concerned!

Alternative Approaches to Management: Roles of Members and Trustees.

David Radford

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Good afternoon. My name is David Radford. I am the Chairman of the Investment Committee of the United Church of Canada.

I do not have a "model" to present but I thought I would review the development of the process we employ. I hope that it might be informative and helpful in your thinking as a pro-active shareholder.

I tend to differentiate between Corporate Social Responsibility and Corporate Governance. But the line between the rights of the shareholder in voting, takeovers, etc. and the right of the shareholder, as an investor with a conscience, to ask the Directors, if the corporation is acting responsibly is fuzzy at best.

In order to talk about our process, I have to give some background and an outline of the organization.

The Investment Committee of the United Church is composed of 13 volunteers working with 2 in-house Investment Officers to manage the General Funds of the Church - $65 million - and the Pension Fund - $450 million. The Investment Committee is a creature of the Division of Finance as it relates to the General Funds and it has been selected by the Trustees of the Pension Plan to manage their funds. As Chairman I am also a Trustee and in that respect wear several hats. That is partially what we are dealing with today, the interaction between the Investment Manager, the Plan Sponsor and the Plan Trustee.

Because of size the Pension fund dominates our investment activities. It is a Defined Benefit plan. Under the terms of the Trust Deed the assets are held for the sole benefit of the members and beneficiaries of the plan. The Church, as Sponsor, does not own any of the assets. That includes the Surplus. But the potential for conflict between the views of the Sponsor and the Trustees as fiduciaries is clearly present.

As a volunteer group drawn from the investment community we are proud of our results as measured by SEI, notwithstanding certain limitations on our investments. Limitations which it is felt the members and beneficiaries as Ministers or Lay-Employees of the Church agree.

Many would view a volunteer committee of 13 plus 2 in-house managers as a scenario for investment disaster. But the full committee only meets quarterly to receive reports and review the asset mix. The real work is done by the 4 sub-committees: the equity sub–committee meets 8 times a year and manages the equity portfolio, the fixed income committee meets 5 to 6 times a year and runs the bond and mortgage portfolios, the real estate sub–committee meets 2 times a year to review the results of the 3 pooled real estate funds we invest in.

A fourth sub–committee deals with Corporate Social Responsibility. Obviously that subject is not new to the Church.

In my experience, the first incidence of Corporate Social Responsibility influencing investments occurred in June 1968. General Council, the ruling body of the United Church, questioned an equity investment in First National City Bank of New York, now Citicorp, because of its loans to South Africa. After discussion, the stock was sold, from both accounts. This act prompted a debate within the Courts of the Church about Corporate

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Mr. Radford has been a member of the United Church of Canada Investment Committee since 1965, and its Chairman since 1978.

Social Responsibility: what it meant, how could it be implemented, who was responsible for it, etc.

A Committee on Investing Church Funds for Social Purposes was formed. It produced in 1973 a booklet called "All That Money Can Bug" with the subtitle "the movement for Corporate Social Responsibility affects you, your money and your church." Despite the passage of 17 years it still reads well.

> "You have to recognize...that there probably isn't any enterprise that is even 99 and 44/100 per cent pure. Businessmen have to make ethical decisions every day in areas where there isn't any clear right or wrong."
>
> "...most churches agree that when they make conventional investments they look for the best opportunities on financial grounds and then work from within to influence corporate practices..."

Notwithstanding the Church's action in 1968 of selling, the Committee concluded that while selling may make the investor feel clean he has, like Pilate washing his hands, missed the point.

> "If you opt out of whatever you think is wrong you give up the opportunity of doing anything about it."

The Investment Committee had significant input to the development of this approach. While the volunteers felt ill-equipped be the conscience of the Church; they believed that they were the best qualified to carry out its wishes. Result was the formation in 1971 of the Proxy sub-committee, now called the CSR sub-committee, which decides how to vote the shares the Church owns. This sub-committee produced a memorandum outlining the philosophy and procedures to be followed. Subsequently this was approved by General Council.

Some significant points are:

- Share ownership involves the necessity of being informed and responsible.
- The AGM is normally not the place for information gathering.

Issues should be explored with Management first. Attendance, with the intention of speaking, at Shareholder's meetings only should occur in circumstances where a major difference of opinion exists. The purpose is not to have a public debate with the Board or Management. That would be a fruitless exercise. The objective is to raise the issue in the minds of other shareholders, current and prospective.

Approaches to Companies are to be made through the Investment Committee. To have a variety of individuals claiming to represent the Church contacting companies would be confusing and counter-productive. This includes the gathering of information, meeting with management, and the voting of proxies.

Where issues have been clearly defined by Church pronouncements, the Committee proceeds on the basis of stated policy. Where issues are uncertain it uses its judgement, if necessary seeking clarification from the Executive of General Council.

Now this was before the introduction of the Shareholder Resolutions became possible under the CBCA. While this option makes the task a little easier, it does not alter the process.

In the years following all churches received a lot of press, both positive and negative, from attending the Chartered Bank AGMs and raising questions from the floor. While primarily about South African loans in the public eye, there were many subjects discussed privately with the Banks. Today there still many items under discussion. Currently the focus is on Third World loans.

I believe that the action of pro-active shareholders has had a positive effect. Just last week, The Globe and Mail reprinted a speech given by Mr. Fullerton, Chairman of the CIBC. I quote:

> Corporate Governance is not confined to a singled minded maximizing of the bottom line.....In today's corporation, the CEO is like a juggler with many balls in the air at once. These balls have labels like shareholders, employees, customers, environment, community and coun-

try. In other words, it's a question of balance.....

I can assure you, from personal knowledge, that Mr. Fullerton's two predecessors would never have said anything like that. We have come a long way.

In 1970 we instituted a program of reviewing Annual Reports to form an opinion of the degree of concern and awareness of the Corporation to the important social issues of the day. This is followed by a letter to the President expressing the Church's concern or praise.

In 1974 the Church experimented with the concept of the Social Audit. Working with a firm of Chartered Accountants we carried out Social Audits on 6 firms in 6 different industries. This work is now being continued by one of the co-sponsors of this conference, The Centre for Corporate Social Performance and Ethics. I know that Professor Clarkson recently presented a paper, "Defining and Evaluating Corporate Social Performance: the Stakeholder Management Model" to the Academy of Management.

This was a lot of activity for an organization with limited financial resources and a heavy reliance on volunteers. We also realized that it was being duplicated by other churches. The result was the formation of the other co-sponsor of this conference, The Taskforce on the Churches and Corporate Responsibility to coordinate, gather information, etc.. A Canadian equivalent of the "Inter-Church Center on Corporate Responsibility" in the USA.

While the churches cooperate in this Taskforce, it is a "Resource Center", not a policy-making body. The United Church reserves the finally say over any statements bearing its name. This is particularly true about Shareholder Resolutions filed using the United Church's shares.

These resolutions are reviewed by the CSR sub-committee. The discussion is not about the subject matter, that has already been decided, it is about the form. In my opinion what the sub-committee, of which I am a member, brings to the table is knowledge of the business world. All of us are or have been senior officers in corporations. We have reported to Boards, served on Boards as Directors, and understand how they operate. A Corporation and its AGM are a legal entity and a legal process. To avoid getting trapped in legal niceties, which is all too easy, you have to appreciate what you can ask the Directors to do. More importantly you have to understand how you ask them to do it. Any hope of having the resolution passed means you must obtain the support of other shareholders. But a loss is a victory, if you obtain the support of others. Those other votes will get the attention of the Directors. It means the issue has broadening support.

I am sure that our sub-committee has made the staff of the Taskforce upset, even angry, when we suggest different tactics or change words. Unfortunately individuals deeply involved in a project off-times see "the" solution and become dogmatic in their approach. It would be so simple if the Corporation would just do that. But convincing a Board is often not quite that simple. You have to lead the horse to water first.

But words are the biggest problem. So many are "loaded". They carry with them a lot of garbage. The mental associations of the listener obscure the meaning of the speaker. The ideal is a simple statement appealing to reason. Sweet reason, if you wish.

How did we deal with the South African problem and the question of divestment [selling by the investor] versus disinvestment [withdrawal by the corporation]? General Council in 1986 instructed the Investment Committee to divest all investments having direct equity investments in South Africa. At the same time it urged the Trustees of the Pension Plan to take similar action.

Obviously the Church can invest its' funds as it wishes, but it recognized that the Trustees had different responsibilities.

The Trustees had established an Investment Policy for the Investment Committee in 1978 and it included guidelines on Corporate Responsibility, in the belief that good social management is consistent with and part of good business management. Based on the existence of this position which covered South Africa; the fact that the Investment Committee had followed it, the Trustees concluded that selling everything in the Pension Fund that was even remotely connected with

South Africa would be a breach of their obligations to the Plan and its members. We were talking about two companies with less than 2% of their business in South Africa. They subsequently disinvested.

An old story, communications. Many in the Church, not differentiating between the General and Pension funds; between the Investment Committee and the Trustees, felt that a small group was thwarting the will of the Church. As Trustees we had to mount an educational program among members and beneficiaries of the Plan. I believe it was successful.

Although divestment is not the chosen route of pro-active shareholders, I am sure the question will arise again. It is such a simple solution.

I do not expect any of you to follow the practices of the United Church. It is time consuming. The Investment Committee, volunteers and staff, are working for the Church and therefore are sensitive to its position. Many of you I expect are employing outside managers; managers chosen for results. Managers rightfully proud of their results; that is all they have to sell. They are not going to recommend that you not buy this or that based on some philosophical view; they worry about their results in the measurement system. If you suggest or impose restrictions on them, they will complain about the potential effect on performance, the criteria you chose them on. They belong to the school of walking with their dollars by selling.

This is not to imply that professional investment managers are insensitive to the world around them. After all I consider myself one in my day-to-day work, but as "Hired Guns", if you will pardon the phrase, we require terms of reference. We have more difficulty with a silent client than a vocal one.

Trustees are in an equally difficult position. A Trust will make them responsible to the members and beneficiaries of the plan; not the Sponsor; not some Ginger group. How can they judge the wishes of the individuals they are representing?

There are no easy or pat answers. But I do have some questions for you. As Trustees, or Administrators, the Ontario Pension Benefits Act word, do you know if or how your proxies are being voted? Is your opinion sought? Do you even see the proxy statements? Have you spent any time studying the resolutions one might class as Corporate Social Responsibility ones?

If the answer is "NO", I would suggest that you are a "couch potato" investor. You have abdicated. I hope you think about the society you will retire in. Right now you have the means to influence what it will be like. Why not use them?

Thank you.

Screening for the Ethical Investment of Pension Funds: the Labour Relations Screen

Bob Hebdon

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Let me begin by stating why I think that the ethical investment of pension funds is an important question for unions today.

First, I believe that the investment of our members' pension contributions in a socially responsible manner is consistent with our commitment to the principles of social unionism in Canada. Indeed, we have an obligation to invest our money in a manner that advances all of society.

Secondly, unions in Canada and particularly in Ontario, given the recent change in the political landscape here, will very soon have the opportunity (many for the first time) to play a meaningful role in the investment of vast sums of pension monies. In the Ontario public sector alone, there are some 30 billion dollars in Municipal, Hospital, School Board, and Government pension funds. These funds will very likely be affected by long-overdue legislative reform giving plan members at least equal representation on joint administrative and investment committees. Perhaps the answer to the yet unresolved question of the ownership of pension surpluses is to create jointly-trusteed pension funds.

Before turning to the screening process, I would like to make some comments about the perplexing question of the bottom line of ethical or socially responsible investment. There is a false assumption in the investment community, I believe, that ethical investment necessarily comes with a price tag. The supposition is often made that investments screened through various, environmental, military, South African, and labour relations criteria will produce lower rates of return for the investor. One of the fundamental tenets of the field of industrial relations is the proposition that equity in the workplace is a necessary component of a productive society. There is growing evidence that workplaces that are safe, allow for worker participation, provide for due process, and have a measure of job security are also more productive. We should not be surprised, therefore, to find that ethical funds in both Canada and the U.S. have achieved rates of return that are well above market averages.

I view a labour relations screen as having six components. In no particular order, they are: compensation, due process, democracy, health and safety, job security, and employment equity.

1/ Compensation

Compensation includes wages, benefits, and working conditions. In general, compensation ought to at least meet the relevant industry norms. However, comparative data are not readily available, especially for non-union firms.

2/ Due Process

All unionized and some non–union firms provide a grievance procedure for their employees. To be impartial and fair, the procedure should provide for neutral third party arbitration in the event that the grievor and the firm cannot agree on a solution. Evidence from the industrial relations literature suggests that grievance procedures in non–union firms are not used because of employee fear of reprisal by the firm. Thus attempts should be made to obtain information about utilization

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rates of grievance procedures.

3/ Democracy

Some firms in Canada, both union and non—union, are recognizing that greater commitment and productivity can be obtained from workers if they have a meaningful say in decisions affecting the production process. Attempts can be made to monitor such activities. If we view unionization and collective bargaining as forms of worker participation, the evidence shows that there continues to exist a significant number of corporations who actively resist unionization by legal and illegal means. Thus a key element of an acceptable labour relations screen must be a clean record by firms in the process of certifying trade unions. Such information is readily available through the appropriate provincial or federal labour relations board.

4/ Health and Safety

In Ontario, records are maintained for all work refusals and complaints filed with the Ministry of Labour under the Occupational Health and Safety Act. In 1988, for example, there were 298 cases of individual work refusals. However, only 49 representing 16 percent of the total were from non—union firms. Again it appears that workers in non-union firms are less likely to exercise their rights. There were also 1,321 health and safety complaints logged under the Act. Of the total, 757 representing 57 percent were from non-union firms. Thus, health and safety complaints may be unbiased indicators of a firm's record on health and safety matters. The researcher must be extremely careful to choose indicators that are unbiased particularly between union and non—union companies.

5/ Job Security

There is evidence, primarily from the U.S., that corporations will close or relocate plants simply to avoid unionization. The Free Trade Agreement has increased these practices in Canada. Firms should be monitored on two levels. First, a file can be established documenting the firm's long term commitment to the community in which it is located. Secondly, the firm's individual policies on such security issues as layoff notice, severance pay, recall rights, relocation allowances, training and retraining subsidies, should be obtained. Much of this information is available from government sources.

6/ Employment Equity

Firms should be monitored on their compliance with employment equity standards as they apply to various minorities in the workplace. For example, pay equity or equal pay for work of equal value, now a legislated requirement in some sectors reduces the wage gap between male and female occupations. The firm's treatment of Canada's aboriginal peoples, the handicapped, women, and visible minorities ought to be carefully examined.

Finally, one point about workplace conflict should be made. In my view some of the U.K. and the U.S. literature on ethical investment reveals a lack of understanding of the role and measurement of conflict in society. One study, for example, suggested that a firm's low strike record (as measured by the number of strikes) be used as an indicator of a good labour relations climate. Apart from the measurement difficulties of looking at the number, size, and duration of strikes, strikes taken by themselves may be a misleading indicator of conflict. Mon-union firms will probably have perfect strike records. But non-union firms or unionized firms with apparently good strike records may have high turnover, high levels of absenteeism, problems with sabotage and pilfering, etc. - all of which may be more damaging to productivity and the elusive "bottom line" than strikes. Some evidence even suggests that the cost to society of strikes has been exaggerated and indeed strikes may perform a useful purpose in providing an outlet or safety valve for pent-up worker dissatisfaction.

Summary

In conclusion, I want to end on an optimistic note. The problems that I have touched on in developing a labour relations screen are eminently solvable. To do a proper job, however, the research must be painstakingly undertaken. Pension trustees should beware of so-called ethical investment funds that do a superficial job of researching this important question.

Obstacles to the Use of Union Pension Funds as Social Capital

Patricia Lane

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

As you read this, money is being taken from a bank account in Toronto and transferred to a trust account in Geneva. Before I have finished this sentence, it may be transferred to South Korea to finance a small business or to Iraq to purchase arms. All of us in this room have capital. Some own companies through our shares. Do you know where your money is? Neither do I. And neither do trade unionists. To many Canadians, it has not occurred that the question exists let alone that it is our right to ask it. To assume that workers understand or accept that it's asking is their responsibility ,is to ask more of them than we ask of anyone else in society.

Yet, as income we earn but defer to provide for our retirement, it is our money. How did this absence of knowledge about this resource which could be so key to ensuring that we have a future we can look forward to on a liveable planet come about?

In recent history we have assumed that the best way for us to provide for our families' economic and social needs, was to work for corporations in return for a wage and benefit package which was properly the subject of negotiation. We asked for raises but not for information about how profits or pensions were invested. Those of us who were not in the salaried workforce tolerated, albeit barely, the disruption of production or suspension of services associated with strikes held to increase wages or benefits. We were completely intolerant of strikes held to support "non - work" related issues such as the question of whether companies should continue to do business with repressive regimes in Chile or South Africa. A strike held to challenge an employer's right to produce a particular good would have been illegal and we supported the governments which passed this legislation.

Corporations provided employment and the tax base for the education and health care benefits we hold dear. Governments delivered the services and arbitrated any differences which arose in the discussions about the terms of employment. And, when it was necessary, governments enacted legislation which described the parameters of the dialogue.

In the age of affluence, our needs were met with very little conscious effort. It is becoming more difficult to meet this challenge without asking questions about spending and investment priorities. What has been named by some as "the old social contract," is being renegotiated. Employers are no longer prepared to be responsible for job creation; governments, no matter what their political stripe, can no longer deliver the accustomed services and have stopped guaranteeing an ever increasing social wage. It is clear also that the past arrangement has not served the needs of people or the planet. The Earth makes it apparent that we can no longer afford to wait. New approaches are called for. We must all take responsibility for understanding where our money is and the uses to which it is now being put. And we must learn how to use it more effectively so that it supports our vision for the future.

We can begin by understanding that the size of the gap must not be underesti-

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mated. In the 1930's and 40's workers and communities started credit unions and co-ops. We lost control of those too. Money became scary - a curse. We decided that there is something more honourable, more decent somehow about having no money, about being poor, than to have money and steward it well. Listen to the phrases with which we socialise our children..."Money isn't everything..."(Indeed, it is "the root of all evil)..."you can't buy happiness...".

Our notions of ethical standards reinforced this view. We were taught that the market operates "value -free", that trading transactions on international equity and money markets have no moral consequences. Many modern Christians, for example, choose not to see that Jesus never said not to have money; rather he cautioned that to have it, is to have a resource which must be stewarded for the common good and that this is a very difficult task. Jesus did not say it was impossible to get through the eye of a needle - just very difficult and requiring miraculous, or transformative energy. But while we are content to believe in the possibilities of miracles to save the planet from destruction, in the case of money, we choose the worst of all possible options. We choose to pretend we do not have any. We choose to abdicate our responsibilities. Claiming ignorance, we allow our resources to be used against our interests and those of the planet.

Money is scary. It has great power. It is a form of strong energy with which to make the world a better place...or with which to wreak misery and pain. We must all understand that it is possible to have fun with money, that we can control it...that it is not the purview of a few (and getting fewer) brokers on Bay Street or financiers in Geneva or blackguards in Sicily or oil sheiks in the OPEC countries.

As we become more conscious a context which allows working people to become friends with money will emerge. For those of us at this conference who are not workers, we would do well to remember that the journey is a shared one.

There are some who are charged with the responsibility of representing workers' interests in the management of union pension funds who see that responsibility as a dual one: to secure a strong financial future and healthy communities in which future beneficiaries can grow old. These people have decided that they must give some additional instructions to their money managers in addition to that of maximizing return.

By and large, people concerned with these issues do not tend to be located in those boardrooms where corporate representatives with total control over their employees' pension funds meet to give instruction to money managers. Instead, these discussions tend to reflect the perceived self interest of the corporate sector which is to be left alone to maximise short term profits. Milton Friedman helps us all when he points out that capitalists are good at doing that. They are not good at making decisions about social policy. I agree. That work should be left to governments and to workers and communities in their democratic organizations. However, Friedman and I part company when the discussion begins about the range of corporate activity which we view as properly the subject of democratic, publicly accountable decision making.

I would begin by arguing that those affected by decisions should have some say over them. Working people are affected by the decisions of their pension fund money managers. They are affected as beneficiaries, as consumers and as citizens of the Earth. They have a right to ask their organizations to raise issues of concern to them at the investment policy discussion tables.

Some unions are choosing to bargain for more control. It is a simple fact that most pension funds are controlled by employers. Before workers can utilise this resource they must control it. So we find the United Steelworkers of America bargaining for control in a few places in Ontario and elsewhere. We see public sector unions across the country, notably in BC and Ontario, lobbying government for increased control. In BC it is still against the law for public sector workers to even bargain over benefits, let alone over the use of the funds themselves.

When they do get control they often use it. The Telephone Workers Union in BC was instrumental in pushing its fund to divest from South Africa. There are other examples of unions using joint control to divest. One large union in the US decided to use its newly bargained right to veto an

investment to apply pressure on a large employer which was refusing to negotiate with another union. The first contract was signed within a week of the threat to use the veto. This effort proved more successful than forty years of traditional organizing techniques. "Money", as we say, "talks".

Some unions particularly in the trades, have sole control over their funds. This is entirely understandable given that trades people viewed themselves as self employed and came together first to protect the standards of their craft. Gradually these craft guilds evolved into organizations which protected working conditions. The concept of taking responsibility for one's own financial decisions from the time of apprenticeship onward to retirement, stayed with the new form of union. It seemed entirely natural to assume that if pension funds could be used to secure work and protect existing working conditions, as well as to secure future retirement income, that this was a sensible role for them to play.

Construction unions in Ontario and BC have used their pension funds, often accompanied with government guarantees of the principal and sometimes return, to allow their members and those of other trades to build housing which workers can afford as well as luxury housing. They have also identified communities where large numbers of working people have chosen to live and developed resorts and municipal infrastructure to sustain and enhance the economy of the area thus allowing the residents a greater chance of remaining there. There are a number of examples in BC.

In the US there are a growing number of examples of union pension funds which are being even more direct, taking on agendas of corporate secrecy and governance procedures which prohibit real shareholder participation. This has yet to be used in Canada.

This is unfortunate as it is in this agenda that the real power to alter the priorities of corporate Canada and America lies. What are the obstacles which remain in the path between our current reality and the future use of pension funds as a tool of social policy?

1. Employer control

As I have said, pension funds cannot be used as a tool of democratic economic policy if they are controlled by corporations. Managers have no mechanism for finding out what social policy decisions they ought to implement. A democratic restructuring of the corporation would have to occur first. It is more likely to occur the other way around at least if the US experience is anything to go by. Pension funds are changing their investment policy because their stakeholders insist that they do so. As they do, their presence as large institutional investors forces corporations which rely on that capital to in turn change their policies.

2. Union responses

Unions have responded in two ways: first by asking for, taking or using, control over certain kinds of decisions. An example is the decision by the TWU's union pension funds trustees to push for divestment from companies doing business in South Africa.

Secondly they have chosen to bargain for complete control. This is far less frequent for some excellent reasons.

First, those funds which employers are willing to give up easily are underfunded. Charged with the responsibility for providing a defined benefit, the employer views it as a liability. A union may agree to take control over investment policy only as a last option, one considered preferential to the threat by an employer to abdicate responsibility entirely.

Second, there is a perceived high political risk. Workers think that they do no know much about managing large pools of capital. Their unions and the trustees their unions appoint, are concerned to fulfil their first responsibility, which is to provide adequate income for retirement. They fear that their lack of knowledge may jeopardise their ability to do this. If the employer fails to do any better, at least workers can take refuge in blaming the boss. Unions are political organizations. Their leaders work hard and often with great dedication. They like getting re - elected. While workers might be angry with an irresponsible employer the threat to quit their jobs is often an empty one. However they can take real action against their union. They are likely to actually

fire an irresponsible leader, no matter how well intentioned. And concern for how money is administered by fellow unionists is a paramount issue in the day to day headaches which union leaders face.

What is necessary to get the issue onto the bargaining agenda? How can the levels of competence and knowledge be increased? Some barriers which currently exist must be removed. Others must simply be understood until they remove themselves.

1. Changes needed within unions

The people who are appointed by unions to manage pensions are often of a particular type...they tend to be older white men who lived and worked under the terms of the old social contract. It worked well for them. Many of them want it back.

They also find it hard to talk to each other. When a small group of us were working on this issue in BC five years ago with the BC Federation of Labour we found it amazing that even though these people were from the same background and shared common interests and languages in a relatively small city, most had never met and most did not trust each other to protect their interests. That was among union boards. Getting management and union in the same room to talk about these issues was a feat that took two years of concerted lobbying and gentle extremely low profile reinforcement.

There is a small but very influential level of union leadership which takes the old cultural context one step further into analysis. They form an unholy alliance between the "right" and the self described "left". The right argues that the best thing is for workers to continue doing it the old way..that bargaining over pension investment is the employers' prerogative. The so called "left" argues that it is not the job of workers to manage capitalism out of its mistakes. Put pointedly and reduced to its minimum, the argument can be said to be "Capitalism contains within itself the seeds of its own destruction and I'm not going to get in its way." Those of us who argue that all resources including financial ones should be turned towards the future are accused of trying to buy our way out of capitalism.

Thirdly, unions have little experience of structuring debates with their members over matters of investment policy. Experiments with new forms of democratic decision making will have to be tried. Consensus decision making is alien to many unions; yet it is the best way to insulate a pension fund board from possible litigation by a disgruntled member. Union members are unused to having their opinions sought without being asked to make a binding decision. Yet the necessity of relying on outside expertise in order to protect the pension fund trustees from liability suits must be respected. Workers have little or no experience with the power that their pension fund proxies could provide. They will have to move carefully, conscious of the needs of all stakeholders as they begin to exercise that power.

There is evidence of real forward movement. Examples include OPSEU' representation to the Slater commission in Ontario, the USWA's position at the bargaining table, and Ken Georgetti's who is the President of the BC Federation of Labour's presence on the board of the affordable housing project of the City of Vancouver which is being developed jointly with developers and trades unions. As the baby boomers get old and as we see that our planet may die before we expect to do so we are asking questions about what use is being made of the 187 billion in pension funds. Some of us figure we can't wait for capitalism to self destruct..there is a planet to be served.

2. Changes in management and government

Management still controls most pension money. Government is in a position to change that through both its legislative power and through its own pension system. In BC public sector workers are not allowed to even bargain pension benefits never mind control. This too is changing.

3. Changes in the way we think about investment policy

If we get control what do we do with it? Pension fund managers are telling us that we are running out of investment opportunities. They tell us that we must allow them access to international money markets and trading opportunities in order to keep the level of returns high

enough to guarantee a pension benefit to workers.

The definition of risk must be re-assessed. There is all kinds of evidence to indicate that including the economic, social and environmental future of a community in which the beneficiaries live, in the actuarial assumptions as to the future health of a pension plan for workers resident in that community, is not irresponsible. Indeed many would argue the opposite. If we invest in ourselves and our communities the problem of a shortage of opportunities will be sharply alleviated. Always the need for a secure investment at reasonable rates of return must be kept uppermost in mind.

The way forward is not yet clear but it is important. More can be said about this elsewhere.

3. Legislative changes

The law of fiduciary responsibility is not clear. Trustees are covered by what may be overly cautious legal opinions that the inclusion of social and environmental criteria in investment decisions is ipso facto an indication of fiduciary irresponsibility. However the concerns do exist and could easily be dealt with by a slight change in legislation.

The public pension plan system must be overhauled to provide for adequate income for spouses and workers who are not covered by pension plans ..which is more than half the workforce. This can be done..it is just a question of priorities.

Conclusion

There are many obstacles to the social investment of union pension funds. However, these obstacles are being overcome. This trend will be accelerated to the degree that we can respect and uphold, as a first priority, the need for respecting the needs of workers for adequate retirement income. We must also work to change the entire cultural context which views money as alien and a hostile force rather than a resource to be used in supporting our common future. Conferences like this one are an important step in this direction. Thank you for asking me to be a part of it.

Investing Pension Funds for Regional Development: Lessons from Organized Labour

Ted Jackson

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Introduction

One of the important sources of experience in the alternative investing of pension funds in Canada and elsewhere is that of organized labour. While labour's experience in this area is partial, unconsolidated and evolving--and badly documented, it must also be said--it is nevertheless a rich and instructive experience that offers a wide range of what might be called 'lessons-in-process'. The purpose of this paper is to highlight some of the main lessons learned by trade unions in their investment of pension funds to promote regional development. These lessons may be of interest to pension fund trustees, fund managers, investment counsellors and others exploring the possibilities for socially responsible investing.

Purpoees

Organized labour has elected to engage in alternative investing for many reasons, but most union investment initiatives are driven by a desire to achieve some or all of the following objectives:

- create and save jobs in a given region;
- create and expand businesses in a region;
- develop new social infrastructure in a region, such as affordable housing;
- stop the outflow of capital from underdeveloped regions;
- educate union and pension plan members, as well as the general public,about positive responses to economic problems;
- attract new members and supporters to the union movement;
- demonstrate that trade unions can manage the economy effectively.

In general, unions are motivated by a perception that governments and markets are not doing enough to boost regional economies.

At the same time, however, trade unions must nevertheless ensure that pension funds receive an acceptable rate of return on their investments and that risks to pension fund assets are minimized. These imperatives have prompted trade unions to set up specialized investment mechanisms that, through various techniques, seek to maximize return and minimize risk.

It is worth noting that to date much of the alternative investing by Canadian trade unions has been carried out in Québec and British Columbia. In Québec, a unique combination of factors, including a broad-based social consensus on the importance of regional development to Québec, a large and influential labour movement, and a network of pro-Québec financial institutions and policies (including the massive Caisse de dépôt et placement, the province's public sector pension investment arm) have simulated innovative approaches by organized labour. In British Columbia, a strong union movement, its informal links to an active credit union movement and the

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large number of jointly trusteed pension funds — especially in the forest and construction industries — have yielded equally innovative labour-directed investment projects in that province.

In other countries, an impressive array of investment projects have been undertaken by unions as well. In the United States, organized labour has benefited from flexible ESOP (Employee Stock Ownership Plan) legislation that provides strong tax incentives to vendors to sell equity to employees and from the federal legislation that governs pension fund investments. In the United Kingdom, innovative projects have been undertaken by labour-controlled local government authorities, particularly in northern England, which have responsibility for managing public sector pension funds.

Types of Investments

Over the last decade and a half, trade unions in Canada, the United States and Great Britain have been involved in investing trusteed pension funds for regional development through five major types of investments: real estate, venture capital, employee buyouts, targeted sectoral investments and socially- beneficial enterprises. While there are jurisdictional and regulatory differences between Canada and the other two countries--and, indeed, across jurisdictions in Canada itself--this international body of experience contains, as a whole, valuable lessons for Canada

• Real Estate.

In British Columbia, individual unions in the construction industry — particularly the operating engineers and carpenters — have been especially active and successful in investing pension funds in affordable and co-operative housing and commercial real estate projects such as office buildings and hotels, all of which have been built by union labour. The Telecommunications Workers Union, the International Woodworkers of America and other unions in the province have set up a specialized pooling vehicle, the Vancouver Land Corporation, to build moderately priced housing in Vancouver. In the United States, there is a host of national, regional and state-level investment mechanisms that are union-controlled and that channel pension fund money into sound real estate projects of various types.

• Venture Capital.

In Canada, union-sponsored venture capital corporations, such as the Canadian Federation of Labour's $2 million Working Ventures Fund and the Québec Federation of Labour's $300 million Solidarity Fund are driven by tax-advantaged unit purchases by retail investors. However, in the early years of the Solidarity Fund, pension funds supported the start-up phase by buying non–voting shares in the fund. In the United States in the 1980's, public sector unions in Michigan supported the use of a portion of their pension funds being allocated to successful venture capital program in the high technology sector. In the United Kingdom, involvement by the pension funds of labour-controlled local authorities in venture capital investing is widespread and growing. In addition, the Postal Workers Union allocates a small percentage of its pension funds to loans to small businesses in the U.K.

• Employee Ownership and Buyouts.

The 1980's saw a rise in the use of pension funds by unions to finance employee ownership and buyouts. In Québec, the Confedération des syndicats nationaux (CSN) provides loans to worker cooperatives through its credit union. Across the United States, the United Steelworkers of America has been especially active in using ESOPs to enable workers to buy into the companies in which they work--though the union is explicit in its policy that ESOPs should not replace collectively bargained pension plans. Also in the U.S., a new investment vehicle, the Employee Partnership Fund, has been set up by the AFL-CIO to channel friendly equity capital from pension funds into large-scale ,leveraged buyouts by employees. Back in Ontario, a similar fund, with the added element of government participation, is being studied as a means of intervening positively in the restructuring of the provincial economy.

• Targeted Sectors.

In the U.S., unions have targeted pension investment in industry sectors that provide jobs for their members. The best example here is that of the Sheet Metal Workers Union, which, in the late 1980's, directed significant investment into com-

panies that produce solar panels, a sector that employs many of its members.

• Socially Beneficial Companies.

Some labour federations, like the Ontario Federation of Labour, are proposing to establish social investment funds that direct investments into social housing, environmental technologies, and local cooperatives and community enterprises. While the current proposal of the OFL relies on weekly checkoffs of worker's savings to finance such a fund, pension funds could also be directed to these purposes.

Lessons In Process

In engaging in these initiatives, trade unions have been obliged to directly address the objectives of maximizing return and minimizing risk. The lessons learned to date in this field by organized labour are really all about how these two fundamental objectives can be met.

• Region-Specific Strategies.

One important lesson from the trade union experience is that investment strategies must be tailored to the specific conditions of different regions. Real estate investments make sense in downtown Vancouver, but in rural Québec venture capital investment is likely a more effective intervention to promote regional development.

• Specialized Pooling Vehicles.

A second lesson is that it is desirable and possible to set up specialized vehicles for different initiatives. These vehicles can be marketed in a specialized manner, can be managed by specialized experts, can utilize existing tax incentives and legal structures, and, most importantly, perhaps, can minimize the exposure of any single pension fund by pooling the investments of a large number of funds.

• New Partnerships.

A third lesson is that new partnerships can be and are being formed that both ensure the success of investment projects and protect the interests of pension funds. Governments at various levels can provide tax incentives, loans and grants, or play the role of equity partner, in alternative investment projects. Other productive partners can include credit unions and caisses populaires, religious bodies and community agencies. Private sector partners are frequently brought into union-led projects as well.

• Professional Advice.

Trade unions have found, particularly in Québec and B.C., that it is possible to recruit and direct--and not be directed by--investment professionals and other technical experts. Proven, professional advice can lower risks and increase the prospects of higher returns.

• Specialized Knowledge and Commitment.

The chances for success and the overall value of union-led investments are enhanced by the specialized knowledge and commitment of pension plan members, either active workers or retired. Members can assist in identifying viable projects, lobbying for public support and ensuring sound operation of the facilities or projects when they are up and running.

• Arm's Length or Hands On.

Unions have shown that alternative investing can be delegated to professional managers who own and operate an investment fund and thus can be carried on at arm's length from the sponsor. Or it can be done in a "hands on" fashion, where the investments fund's board of directors is decisively union-controlled, as are senior staff of the fund. These approaches are also available to other organizations, such as churches and religious orders, interested in alternative investing

Future Opportunities

The obstacles to union-led pension fund investment for regional development should not be minimized. Rigid, conservative legislation governing pension fund management not only restricts investment options, but also, in most jurisdictions, restricts the ability of employees or plan members to exert influence over the investment process. However, somewhat ironically, market- oriented pension reform and deregulation are creating some room for manoeuvre by trade unions in this area.

In spite of these and other obstacles, though, there will be many opportunities in the future for trade unions and other organizations to take action in the area of alternative investing. For one thing, more

and more unions are putting the co-management (with employers) of pension funds higher on their collective bargaining agendas. The sheer size of trusteed pension funds and their consequent economic power, the demographics of an aging workforce and critical issues such as indexing of pensions and the ownership of pension surpluses, all have caused unions to place greater importance on pensions and their administration. Accordingly, it is also likely that union-sponsored trustee education programs will be mounted more frequently, and that at least part of their curricula will focus on investment strategies.

There will also be opportunities in the future for organized labour and its allies to structure new, specialized investment funds, including those promoting environmental technologies, industrial restructuring and Canadian ownership. Special regional development funds may emerge in the Atlantic region and the north, particularly in light of the uninspired performance of most current instruments for regional growth. The possibility of a national investment bank financed by private and public pension funds and other institutions may become a focus of policy debate as well. Such a bank could carry out a program of long-term investments for regional development through intermediaries rooted in regions and localities. The abject failure of the present national government to address regional inequities in Canada renders consideration of a national development bank a necessity rather than a luxury.

Conclusion

Our nation desperately needs renewal and reunification. Pension funds can play an important — and, if they choose, a leading — role in the re-making of Canada. Part of what must be done is to build economic strength and momentum in all parts of the country. Organized labour's experience in investing pension funds for regional development is rich and instructive, and should be studied closely by those individuals and organizations interested in socially responsible investing.

Responsible investing is about empowerment. Using pension funds to promote regional equity and development empowers all of us: citizens, pensioners, workers, companies, investors. Trade unions have shown that the financial integrity of pensions and the long-term security of plan members do not have to be sacrificed in the service of empowerment. Risks can be minimized, returns can be maximized and social change can be advanced, all at the same time. These are contradictions that can be resolved.

Alternative Investing

Eugene Ellmen

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

Alternative investing is attracting a growing amount of interest by church groups and other parties interested in socially- responsible investment. This paper aims to define the basics of alternative investment, and set out some of the ways that pension fund managers can invest a portion of their portfolios to help foster progressive social change.

Alternative Investment – A definition

Traditional definitions of alternative investment have not focused on the essential aspects of this novel form of socially-responsible ingesting. For example, in the 1987/88 Annual Report of the Taskforce on the Churches and Corporate Responsibility, TCCR states:

In alternative investing, a higher level of financial risk or a lower rate of financial return may be accepted in order to achieve a social benefit as part of the overall return to the investor.

By focusing on the rate of return or level of risk, this definition misses the point about alternative investing. The essential aspect of alternative investing is not the negative risk or return to the investor (which, as will be explained later, is a misrepresentation of many alternative investments). Rather, the important characteristic of alternative investing is the desire to create an enterprise which is outside the traditional for-profit, free market, private sector economy. Hence, the name "alternative" is quite apt.

Alternative enterprises include a host of activities which are helping to create a new economy based on human needs rather than private profit. Co-operatives, which are democratically-controlled by the members who own them, are among the variety of alternative enterprises. Co-ops fall into a number of categories:

- Consumer co-ops, such as credit unions and child care, health care, housing and food cooperatives;
- Producer co-ops, such as farm cooperatives and;
- Worker co-ops.

In addition, alternative enterprises include a variety of non- profit enterprises. These cover such activities as artistic or cultural productions, sports competitions or the construction of facilities for these activities.

Alternative enterprises may also include a variety of activities which are designed to serve a particular group which has traditionally been considered disadvantaged. The WomenFutures Loan Guarantee Fund, based in Burnaby, B.C. – which guarantees loans to women entrepreneurs – falls into this category.

Finally, a number of community-based enterprises, such as community development corporations, are fostering democratic, locally-based economic development. These corporations -- directed by a board chosen from the local community – aim to foster grassroots economic development which benefits the community as a whole while providing productive employment.

All of these forms of alternative investment aim to empower or enable the workers, consumers, residents or other stakeholders associated with them. As such, they lie outside the traditional for-profit, free market model of entrepreneurship and enterprise. They are seeking to build an alternative economy based on human needs, co-operative and democratic values and responsiveness to local communities.

While alternative investment shares with ethical investing the desire to invest ac-

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cording to human values, alternative investors are not content to place money with socially-responsible corporations. They want to help establish new forms of business which directly benefit the members, consumers, workers or community associated with the enterprise.

"Concessionary investing"

Some institutional investment funds, such as the Canadian Alternative Investment Co-operative, invest in alternative enterprises. But few (if any) Canadian pension funds have made alternative investments.

One of the reasons for this is a misunderstanding about alternative investments by pension fund managers. One of the few reports on this topic – the 1987 Ontario Task Force on the Investment of Public Sector Pension Funds -- describes alternative investing in a misleading way.

The report, entitled "In whose interest?," describes the concept of "social investing." According to the report, social investing is the pursuit of "non-financial goals even though the financial performance of a particular pension fund might be impaired.

Not surprisingly, the Task Force rejects this type of activity as "concessionary investing." The report states that the fiduciary obligations of pension fund managers prevent them from investing in any activity which would impair the financial performance of the fund. On this topic, the report concludes:

In fact, it is of considerable concern to the Task Force that some people appear more interested in achieving their concept of a just and equitable society through pension fund investments than in the basic purpose of pension fund.

By putting the concept of social investing in these terms, the Task Force has created a convenient straw man which is easy to knock down. The argument of the Task Force goes like this: Investments in socially-just enterprises must entail some concessionary benefit. Because pension funds have fiduciary obligations to their beneficiaries, they are unable to make concessionary investments. Hence, pension fund managers can ignore the social or environmental consequences of their investments.

Nothing could be farther from the truth. Many alternative investments generate market or near-market returns for their investors. Even non-profit enterprises -- which do not generate a traditional "surplus" -- still require weekly, monthly and annual cashflows. These cashflows -- generated out of donations, public grants, subscriptions or other revenues -- hold the potential to cover financing costs -- costs which can generate market or near- market returns for investors.

Some non-profits, for example, can pay private lenders interest rates which are generally above the T-bill rate. This interest is paid on loans to finance operating costs. This arrangement is advantageous to the non-profit because it reduces the interest costs on lines of credit offered by chartered banks. While the risk posed to the investor is higher than the relatively risk-free treasury bill, the risk is probably not higher than many other private placements or stock purchases. At the same time, the investor knows that he or she is helping to build a not- for-profit alternative community.

It is important to understand that alternative investing is not another form of charity. while some investors may choose to provide capital at below-market rates for alternative enterprises, it is not a necessity for pension funds or other investors to assume a higher level of risk or lower returns to participate in this form of investing.

Pension fund managers should come to regard alternative investing as a socially-responsible form of venture capital. Pension funds are not now prohibited from making venture capital investments, and many do devote a small portion of their portfolios to venture investments.

In my view, pension fund managers are permitted to devote a portion of their portfolios to alternative investments, as long as the overall rate of return or level of risk to the fund is not unduly jeopardized.

Alternative Investing and Community Development

One promising area for alternative investments is in the area of community economic development.

As Special Assistant to the Ontario Minister of Agriculture and Food, I am currently involved in a review of provincial policies and programs on farm and rural finance. In a series of hearings that were held across Ontario in November and December, 1990, farmers and farm organizations reiterated the theme that the financing of farm and rural enterprises must be done through the private sector.

Yet the maintenance of our rural communities is a fundamental social justice issue. If urban dwellers wish to preserve farmland for environmental benefits, this preservation must not be done on the backs of agricultural producers. Restrictions on the development of agricultural land without support for the farmer is patently unfair to rural communities.

This is why it is necessary to have alternative investments which foster democratic, community-based rural economic development. Rural communities desperately need to begin discussions with pension funds or other investors interested in developing such new enterprises as processing cooperatives, which would add value to raw agricultural products.

At the same time, alternative investors may also be guided by a wider social vision. Investors concerned about the health effects of tobacco, for instance, may be interested in financing alternative crops for land now in tobacco production.

But rural community development is only one avenue for alternative investment. As discussed above, democratic forms of development are available through a variety of enterprises in rural and urban areas.

Alternative investing – three challenges

I'm going to conclude with three challenges to pension fund managers. These challenges are made in a spirit of good will, with an eye to the fact that pension fund managers must abide by their fiduciary obligations. At the same time however, pension funds must understand that their investments do have social and environmental consequences.

1) Begin discussions with your beneficiaries and important stakeholders about social investing. As noted, investment decisions inherently have social justice and environmental impacts. It's important to educate your stakeholders about these and come to a consensus about socially-responsible investment policies.

2) Make a commitment to alternative investing. Include alternative investment criteria in your investment policies. Such a commitment would help to foster progressive social change.

3) Set a target for your alternative investments. Establish a - percentage of your total portfolio which would be an appropriate level of investment in alternative enterprises. If all pension funds devoted even one or two per cent of their portfolios to alternative investments, significant funds would be made available to progressive enterprises.

If implemented, these three challenges would help to unleash millions of dollars in investment capital to help build an economy committed to progressive social change.

Shareholder Action: Recent Canadian and Global Experience

Brian Iler

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

It is appropriate for me to follow John Taylor, as developments in Canadian law on shareholders' rights have generally followed developments in United States law, with a characteristic lag time of, not years, but decades.

The most significant American development occurred in 1934 with the introduction of proxy solicitation rules under the Exchange Act of 1934. About eight years later, the Securities Exchange Commission (the "SEC") adopted the first rule establishing a shareholder's right to communicate with other shareholders through the management proxy circular.

Canada did not begin enactment of equivalent legislation until 25 years later, in the late 1960's. The Canada Corporations Act - the precursor to the Canada Business Corporations Act - was amended to provide for such right of communication only in 1975.

While the shareholder rights provisions in the Ontario Business Corporations Act have been updated subsequently, corresponding provisions in the Canada Business Corporations Act - under which most large Canadian corporations are incorporated - have sat untouched for 15 years. By contrast, the United States Securities Exchange Commission has amended its rules six times in the past eight years. Given that some of these changes appear politically motivated (these were the Reagan years after all), still, by contrast, Canadian law reform in this area has been remarkable by its absence.

As we know, in widely-held corporations, an extremely small proportion of shareholders attend shareholders' meetings. This fact led management to ensure control of the meetings by soliciting enough proxy votes to outvote any challenge from the floor. What the reforms of the thirties, in the U.S., and the sixties and seventies, in Canada, did was to accept the proxy solicitation as a given, and attempt to ensure that shareholders, through the proxy solicitation process, were able to exercise rights analogous to those they could exercise in a meeting.

As a result, shareholders were given two things: a right to basic information, contained in the management proxy circular, to assist in making an informed decision on the exercise of the proxy vote, and the right to include resolutions in the management proxy circular for the consideration of other shareholders.

In effect, for many corporations, the proxy solicitation process has replaced the shareholders' meeting as the forum for shareholders' rights to be exercised. If that is true, then the scope of the right to propose resolutions for inclusion in the proxy circular is the key factor for shareholders who wish to address aspects of the corporation's activities that concern them. Under the CBCA, a corporation is not required to include the proposal in its proxy circular:

1. if the right to submit a proposal is being abused to secure publicity;

2. if "substantially the same proposal" was submitted and defeated within the preceding two years;

3. if it clearly appears that the proposal was submitted for the purpose of enforcing a personal claim, or for the purpose of addressing a personal grievance against the corporation or its officials, or;

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4. if the proposal was submitted primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes.

This last reason for exclusion - proposals promoting general economic, political, racial, religious or social causes - has caused difficulty for activist shareholders in Canada.

Three Canadian court decisions have considered this phrase:

First, Greenpeace - as part of its campaign against acid rain - submitted a shareholder proposal prior to Inco's 1984 annual meeting. It requested that Inco's directors carry out certain pollution control measures recommended by the Canadian Coalition on Acid Rain. Inco's management refused to include the proposal in its proxy circular. In response, Greenpeace applied to the Supreme Court of Ontario to require inclusion.

Greenpeace lost because of a common practice: securities dealers routinely hold the share certificates in the dealer's name, in trust, for the beneficial owner. Relying on its dealer's confirmation that it had purchased Inco shares, Greenpeace submitted the proposal. Inco alleged that Greenpeace was not a shareholder entitled to submit a proposal and, surprisingly, both the Supreme Court of Ontario and the Ontario Court of Appeal agreed.

The lesson is clear: before submitting a shareholder proposal, ensure that your dealer obtains share certificates in your name. Alternatively, the law should be clarified to reflect this common practice. In addition, the court held that the proposal Greenpeace submitted was substantially similar to one accepted by Inco in 1983, and could be excluded from the proxy circular for that reason as well.

In the United States, the approach taken with respect to substantially similar proposals is somewhat more enlightened: there it is recognized that support might take time to build and, therefore, a proposal is permitted to be resubmitted if it obtains the support of 3 per cent of shareholders in the first year, 5 per cent in the second year and thereafter, if it obtains 10 per cent support.

Finally, the court held that the primary purpose of the Greenpeace proposal was promotion of a general environmental cause - the abatement of acid rain, and agreed with Inco that it could be excluded for that reason as well.

In the second case, The Task Force on Churches and Corporate Responsibility was equally unsuccessful. In 1987, two of its members - the Jesuit Fathers of Upper Canada and the Ursuline Religious of the Diocese of London - submitted a resolution to Varity Corporation (formerly Massey Ferguson) requesting that the board of directors take immediate steps to dis-invest from South Africa.

The proposal contained nine recitals (or "whereas" clauses), referring to the risky conditions for business in South Africa and the fact that economic measures to compel change - quote - "may offer the last opportunity to avert what could be the worst blood bath since the Second World War" - end quote - a thought particularly relevant today in the Middle East context.

Varity refused the proposal, and out of caution, perhaps, itself applied to the Supreme Court of Ontario, for approval of its refusal.

In court, Varity argued that the proposal was submitted primarily for the purpose of promoting the abolition of apartheid in South Africa, a general social cause. In response, it was argued that the proposal related specifically to the business affairs of Varity in South Africa, and it was therefore in order.

The court accepted Varity's argument, and granted permission to exclude the proposal.

That didn't end the story, though. Varity shares are traded on American stock exchanges and, accordingly, Varity was bound not only by Canadian legislation, but by the American SEC Rules, which apply a more lenient test: a resolution may be excluded only if it is not sufficiently related to the affairs of the corporation.

Because Varity did not and could not obtain the permission of the SEC, notwithstanding its success in the courts of Canada, it was obliged to include the South Africa proposal in its proxy circular.

The Taskforce found itself in court again when, in January 1989, several of its members submitted a proposal to Shell Canada requesting that it express to its parent corporation - The Shell Group - the desire of Canadian public shareholders that Shell begin withdrawing its investments from South Africa.

Shell, learning from the Varity experience, applied to both the Alberta Court of Queen's Bench and to the American SEC for permission to exclude the proposal from its proxy circular.

Because the Varity decision had been appealed and upheld by the Ontario Court of Appeal, the decision was binding on the Alberta court. The Task Force therefore did not oppose the Alberta application.

As expected, the SEC rejected Shell Canada's request. In desperation, Shell Canada hired American lawyers who were unable to budge the Commission and, ultimately, Shell simply ignored the SEC requirements, taking the risk that the infraction of SEC rules would not be treated seriously by the SEC.

The result of these three cases is clear: unless the SEC rules apply, a Canadian corporation can, with impunity, refuse to include a shareholder proposal in its proxy circular if it addresses any economic, political, racial, religious social or similar cause, even if the corporation's activities have a direct impact on such a cause.

This was not the intent of the original American wording from which this phrase was drawn: a 1945 SEC ruling indicates the intent of the wording was to prevent inclusion of proposals beyond the company's sphere of control.

Notwithstanding that intent, the American courts in 1951 interpreted the text the same way as the Canadian courts in permitting Greyhound to omit a proposal requesting integration of its buses. The American rule, as noted earlier, has long since been amended.

Of course, organizations like Greenpeace and the Taskforce do not bring their proposals with a view to obtaining approval from shareholders, although that would be nice. Their interest is in achieving a greater degree of responsibility from corporations for the social consequences of their activities.

Open discussion on such issues often has the desired effect and shareholder proposals can, and should be, an important vehicle for advancing that discussion.

Opportunities to drive a point home can also sometimes be created. I spoke this week with Dan McDermott, the campaigner responsible for the Greenpeace acid rain campaign about the 1984 court proceedings. Greenpeace was ordered to pay Inco $5,000.00 in court costs as a result of its unsuccessful application and appeal. To pay the last $1,000.00, Dan dressed up as Santa Claus just before Christmas and attended, with reporters in tow, at the office of Inco president Charles Baird with one thousand $1 bills in a sack. Baird refused to see McDermott, and the resulting headline in the Star the next day read "Inco Grinch Refuses Greenpeace's Present". When I asked Dan if, with Greenpeace's limited resources, particularly back then, the court proceedings were worth it, he replied, referring to that Star headline, "It certainly was!" And shortly thereafter, Inco announced it would drastically cut emissions from its Sudbury smelter!

To sum up:

The shareholder proposal is an effective means to encourage corporations to act more responsibly. Given the reality that the proxy solicitation process, for many corporations, has replaced the shareholders' meeting as the locus of shareholders' power, it is essential that the scope of proposals permitted more closely approximate the scope of resolutions permitted at meetings by the ordinary meeting rules of order.

Canada's current laws, as narrowly interpreted by the courts, do not permit that, and need to be changed. And, while we don't like to say it, here, we can learn from the American experience.

Shareholder Action: Recent Canadian Experience

Moira Hutchinson

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, University of Toronto

When we talk about shareholder action we are making a distinction between three approaches to responsible investment. You've heard in other sessions today about ethical, or screened investment where an ethical screen is applied to the investment decision. You've also heard about alternative investment, which defines a social benefit as part of the return, and may necessitate a lower rate of return or higher financial risk to the investor. Active shareholdership, the third approach, involves investors using their rights and responsibilities as shareholders to influence the policies and practices of a company.

These three choices for a social investment strategy can be used separately and together in varying combinations by the same investor. However, I would argue that the truly responsible investor cannot avoid being an active shareholder. Once you have screened your investment portfolio, you will still have investments in companies that will not and cannot be expected to be forever perfect. You have a responsibility to monitor how these companies are using your investments and to try to persuade them to change practices which don't meet your criteria for responsible behaviour.

In Canada, in comparison with the United States, there has been very little public action by shareholders on social or environmental issues, or even on corporate governance issues. I'm not sure what the reason is - whether it is simply a question of a time lag between U.S. and Canadian practices, or whether Canadians have considered the legislative route for holding corporations accountable to be sufficient. I won't try to explore this question now.

What I would like to do is describe briefly the ways in which shareholders have tried to change corporate behaviour to reflect their own or public priorities and values, and then to focus more closely on the use of shareholder proposals as a strategy for responsible investment in Canada. I'll be drawing mostly on the experience of the Taskforce on the Churches and Corporate Responsibility which has been coordinating church shareholder action since 1975.

Shareholder action may be as simple as writing to the management or Board of a company to ask a question or state your opinion on an issue. This is where the churches always start, and some issues or questions may be satisfactorily dealt with through correspondence. If a company doesn't respond to a letter - and it is not unknown for this to happen - we find it helpful to inquire about the date of its annual meeting or the deadline for filing shareholder proposals! We usually then get an immediate response to our letter - most companies quite naturally would rather satisfy shareholder concerns without publicity. And in response to the assertion this morning by David Grier of the Royal Bank that the churches take too legalistic an approach to shareholder issues, I must point out that we have very often found companies unresponsive unless they are confronted with the possibility of a question or a shareholder proposal at an annual meeting.

In addressing more complex issues, we generally go on to ask for a meeting with the management of the company - and we always ask for such a meeting if we think that we might want to discuss the issue at the company's annual meeting. The letter asking for the meeting sets out our concerns in some detail, to give the com-

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The Taskforce provides research and coordinates action for 23 member churches, religious orders and agencies. Moira has particular staff responsibilities for the work of the International Issues and Corporate Governance committees of the Board.

pany time to prepare a response. At the meeting we take notes which are circulated back to the company. The company representatives may suggest amendments to clarify interpretations or provide additional facts. This process helps to ensure that we do not proceed further with incorrect facts or a misrepresentation of the company's position.

Unfortunately, this meeting does not always provide all of the information needed. David Grier spoke this morning of the inaccuracies and incomplete research which he believes sometimes characterize church positions. If this charge can be substantiated, I suggest that it would be in part due to the fact that Canadian companies are legally permitted to refuse the disclosure of an enormous amount of information necessary for a full evaluation of their social and environmental performance.

If we find that the meeting with management has not resolved our concerns, the annual shareholder's meeting is the next step. We hope that our questions, and the company's response will encourage other shareholders and the public to communicate their positions to the company.

And finally, if we have arrived at a position on an important issue with which management continues to disagree, and if we want to be sure that all shareholders have an opportunity to indicate their position, we file a shareholder proposal which the company is required, with certain exceptions to circulate in the proxy circular prior to the annual meeting.

I'm sure you are wondering by now if all of this careful and sometimes time consuming process has any rewards - is it effective? The short answer is yes. The more equivocal answer is that it depends on the time period within which the action is evaluated it depends on the issue, and it depends on whether we have requested incremental or radical change. And I should also emphasize with respect to the examples which follow, that we are not normally the only actors seeking change in a company's behaviour - when there has been success we have usually been only one contributor to that outcome.

Some examples:

For years, church shareholders pressed Canadian banks and corporations on questions of investment and loans to South Africa. From the mid-1970s on, we arranged meetings with management representatives asked questions at annual meetings, and eventually, when the law permitted it, filed shareholder proposals. The reaction, in the earliest years, was sometimes hostile. At a Bank annual meeting in 1976, a request for a halt to South African loans aroused the wrath not only of fellow shareholders who told us where to go, but also of the chairman who switched off the microphone. But by 1978, the Royal Bank and 1980, the Toronto-Dominion Bank had announced public policy positions limiting loans to South Africa. As a result, by the time the Canadian government got around to announcing sanctions on loans in 1985, it was essentially simply giving its blessing to a private sector policy that was already in place. We later heard that a bank chairman said - privately - that the churches should be thanked for pushing them out of loans to South Africa earlier than they might otherwise have done.

The disinvestment campaign was also furthered through the use of shareholder proposals. For example the churches filed a proposal in 1986 asking that Alcan withdraw from South Africa unless it could assure shareholders that its production was not used for military purposes. Shortly after filing the proposal, the churches received proof of what they had long suspected, that Alcan's South African affiliate produced a variety of military components, such as casings for rocket shells and aluminum fins for bombs. Alcan announced its withdrawal from South Africa one week before its 1986 annual meeting.

Another example:

In 1984 the churches submitted a shareholder proposal to the Canadian Imperial Bank of Commerce asking it to adopt a secret ballot policy for shareholder meeting proxies and ballots. Our concern about secret ballot procedures had been sparked the previous year when we had submitted a shareholder proposal to the Bank calling for disclosure of foreign loans above a certain threshold. The Globe and Mail found out that the Bank contacted shareholders, after their vote had been submitted and before it was tabulated, to

verify whether they had meant to support the church proposal. So in 1985, we felt justified in asking the Bank to adopt a secret ballot policy. Management opposed the proposal, and the shareholders overwhelmingly supported management with only 7% voting in favour of the proposal. This was not an unusually low level of support as at that time shareholders almost automatically supported management without question. However, in what the Globe and Mail reported was a "confusing turn of events," management at its annual meeting agreed to adopt the spirit of the churches' request which it had asked the shareholders to defeat.

It is encouraging to be able to report that since then many companies have voluntarily agreed to adopt secret ballot policies, and that levels of shareholder support for proposals on the subject are much higher than in 1984. A secret ballot proposal to INCO last year received a 25% level of support, and in the U.S. in 1989, 39 secret ballot proposals received an average support of 27.4%.

A further example:

Last April the churches filed a shareholder proposal with Noranda asking it for annual reports on its compliance in its forest land management practices with its own code of environmental practice; and asking it to develop procedures for periodic independent environmental audits and reports on those audits. The company opposed the proposal and in its formal statement said that all of the Noranda Group companies conduct internal environmental audits, and that Noranda's forest land practices are audited by the government. The proposal received just 7.6% of the shareholder vote.

At the annual meeting, however, management promised that the company would seek to improve its environmental reporting to shareholders. Since the meeting, Noranda has cooperated in further discussions with us about the nature and role of environmental audits, and the information needs of shareholders wanting to evaluate a company. It also revealed — to our surprise — that despite the impression created at its annual meeting, it had not yet begun a process of internal environmental audits of its forest land management operations, although it is now about to do so. We can' t help but think that what appeared to be an unsuccessful shareholder proposal has had some results.

Some shareholder proposals are discussed with the company and then withdrawn because of company agreement with the proposal, or a compromise acceptable to the filer. For example, the churches prepared a shareholder proposal for Spar Aerospace requesting that it develop a public policy statement on its production for military uses, and that it support the concept of an arms trade register and Canadian government disclosure of how it implements its military exports policy. Because Spar agreed to part of this proposal - and agreed to give further consideration to the points with which it had difficulty - the churches withdrew the proposal.

What must be clear to you by now is that we've never actually won a vote on a shareholder proposal. But even 10 - 15% of the shareholder's support - given the ownership structure of modern corporations - is often taken by the company as indication that an issue is one it can't ignore. The mechanism of the shareholder proposal is therefore an important vehicle for sampling shareholder and public opinion. Shareholders asking questions at annual meetings are now accepted as legitimate. Instead of being booed, we occasionally receive applause. The level of support from other shareholders is sometimes surprisingly high. For example, a proposal in 1988 to Rio Algom regarding its investment in Namibia received an astonishing 47% of the shares not owned by RTZ, its parent company. The sources of support are also sometimes surprising. In both 1987 and 1988 the federal and Ontario governments — both shareholders in Varity Corporation — voted in favour of a church shareholder proposal calling on Varity to disinvest from South Africa.

Wouldn't it be wonderful if, last Spring, enough shareholders had used their clout to force Varity to live up fully to its responsibilities to its workers and the Canadian public, instead of allowing it to slip off to greener U.S. pastures?

The conclusion, I think is obvious. Shareholders have responsibilities and opportunities to help reshape corporate priorities so that the way our money is used reflects our values.

Shareholder Action: Recent Global Experience What About Europe and Japan?

John M. Taylor

Presented at "Strategies for Responsible Share Ownership" 7 Dec 1990, , University of Toronto

Institutional investors in at least one other North American country are training their sights beyond the home market, and beyond the increasingly integrated economy of North America. As financial markets globalize, there has been a growing realization that the stateside domestic market by itself does not offer the fullest possible benefits of portfolio diversification. As these investors do globalize, they are sure to make waves. U.S. pension funds, university endowments, money managers, foundations and others have told us repeatedly they want to exercise their rights as shareholders overseas as they do at home. For private pension funds governed by ERISA, such concern is virtually mandated by the U.S. Department of Labor. Such investor activism is fresh and exciting, sometimes even scary to their overseas colleagues.

The Global Shareholder Consortium, originally composed of 18 institutional investors who had been sponsors of other IRRC research, first asked IRRC last year to look into shareholder issues outside the united States. The Consortium's members are now investing between 10 and 20 percent of their assets overseas, or plan to reach that range within a couple of years. The consortium has grown to 23 institutions, including pension funds, money managers, foundations and one university.

I want to start with a few comments about the European situation, then move on to Japan, where I feel the most at home.

SWITZERLAND

Japanese management may be more unresponsive to shareholder dissidence than its counterparts in many other markets, but the Europeans have the most extraordinary regulatory structure--certainly by North American standards. Switzerland's is probably the most peculiar among the big ten non-U.S. markets we cover. In Switzerland, companies can restrict the voting rights to as little as two percent of outstanding shares for any single shareholder or coalition of shareholders.

Theoretically, this means that an investor or coalition that might acquire 90 percent of Nestle, which has adopted such a restriction, would be unable to exercise control of the company by voting at the general meeting. In fact, such legal possibilities are not unique to Swiss law. Switzerland's statutes are extraordinary because they do not prevent companies from effectively disenfranchising non-Swiss investors. Management in Germany and to varying degrees in other continental markets can protect itself from shareholders with percentage restrictions on voting rights. In Switzerland, voting restrictions can actually be applied to foreign holdings, without affecting domestic ones.

These and other arrows in the management quiver have led some analysts to argue that Swiss management is effectively free of accountability to shareholders. It is perhaps ironic that Switzerland would be the site of one of the oldest social responsibility shareholder campaigns in Europe, which focused over ten years ago on the infant formula marketing practices by Nestle. CANES (Critical Shareholders of Nestle) has evolved from a social responsibility focus into a more comprehensive shareholder activist organization, and is challenging a number of provisions Nestle has taken to insulate management from shareholders.

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Mr. Taylor's responsibilities include research and reporting on shareholder issues in Japan, Australia, and Europe. He has extensive experience in the Japanese commercial environment and speaks the language fluently.

WESTERN EUROPE

There is a spectrum of management responsiveness to shareholders — based on attitudes as well as regulations--from Switzerland through Germany and France, to the U.K. Although Switzerland is at one end of the spectrum, shareholder protections on the continent are generally not codified to the extent that they are in North America and Japan. Swiss-style voting restrictions are generally allowed--though they aren't as tight, and companies are less frequently accused of discriminating against foreign investors as are Swiss companies.

Continental companies make extensive use of so-called bearer shares (sometimes the only kind available for international holdings). Bearer shares differ from the more familiar registered shares that more closely resemble what we see in North America or Japan. Companies have no record of who owns bearer shares, so investors must show up with certificates in hand to establish ownership and admission to a shareholder meeting. They cannot be voted by mail. Bearer shares often carry fewer votes for the same level of investment than the registered shares of the same company.

Although registered shares are increasingly being made available to overseas investors, they also have their complications. Registered shares are subject to voting rights restrictions in much of continental Europe, and some countries require as little as 10 days advance notice of agenda items to shareholders, not counting mail time.

Shareholder attitudes and pressure for change is very much on the rise, however, even on the continent. Church-affiliated groups such as Pax Christi are joined by social-oriented groups such as CANES and shareholder advocacy groups in the Netherlands (vereniging van Effectenbezitters,/Association of Shareholders), Germany (DSW) and Austria (Forschungsinstitut fur Ethische-Okologische Geldanlage//Research Institute for Ethical-Ecological Investment). Those interested in European shareholder activism should have a look at the second article in IRRC's Global Shareholder Autumn issue, available at the back of the room.

BRITAIN

Britain's shareholder environment resembles that in the United States more than does any other European market--but a U.S. of 10 years ago. Like the U.S. in the early 1980's, Britain has the machinery of investor rights available, but it is only sporadically used by shareholders. Still, the last few years have seen a marked acceleration of shareholder activity in corporate governance and social responsibility issues.

Evidence of the spread of shareholder activism can be found in many quarters. The National Association of Pension Funds and the Association of British Insurers, which together represent the U.K.'s largest institutional investors, have become more outspoken on shareholder rights. Several pension funds have taken active roles advocating shareholder rights at annual meetings and in private discussions with management. At the same time, PIRC – Pensions Investment Research Constultants – has stepped up its drive to encourage municipal retirement funds to become active investors. The firm sponsored a pension fund conference on "Green Investment Strategies" some months ago, and a second on ways institutions can press British companies to withdraw from South Africa. I believe the ubiquitous Eric Wollman, this morning's keynote speaker, contributed to both of these events.

More like in the U.S., institutional investors in Britain now routinely analyze and take positions on high-profile takeover fights, such as this year's battle at BAT. Unlike on the continent, Britain has been the scene of a raft of hostile takeover attempts.

The trend toward greater activism is up. A British court ruled in 1984 that financial return must govern, in decisions about mineworkers' pension funds. This was interpreted as a virtual prohibition on ethical considerations for a variety of fund types. Now the Bishop of Oxford is suing the Church of England's fund managers in a case that could reverse the older precedent.

All over western Europe, shareholder proposals are more difficult to accomplish than they are in the United States, and most organizations are still unfamiliar with such instruments of corporate democ-

racy; they prefer to engage in familiar tactics rather than venturing into the legal unknown. Many funds seem to be waiting for another to assume the lead in this field, and some, especially in the U.K., explicitly argue that American investors taking active roles as shareholders in their market may serve as that catalyst.

JAPAN

From the U.S. perspective, based on what I have heard so far, Japan is like Canada, only more so. Japan has no SEC counterpart. Shareholders are left to fight in the court system when managements refuse to circulate their proposal with proxy packages. That might sound familiar.

Japanese law is in many other ways not unlike that in Canada or the U.S., but management and prevailing institutional shareholder attitudes are quite another matter. Management is usually frank in its policy of not going beyond minimum legal requirements for shareholder convenience. That means overseas investors can face a great deal of inconvenience if they wish to exercise shareholder rights without some knowledge.

I usually lead into Japanese proxy voting discussion by making reference to where it all began. The ancient Japanese creation myth accounts for the formation of the Japanese islands and the Japanese people, but never accounts for the fact that people apparently came into existence in other lands. It has been said that Japanese proxy voting procedures have taken their cue from the same tradition. Proxy cards are sent out by regular mail in Japanese to shareholders all over Japan, leaving enough time to vote by regular domestic mail, while no special provisions are made for shareholders further away who don't read Japanese. Even so, the mechanics of voting Japanese proxies are not insurmountable. But before getting into that, I want touch on the paradox of the legal status of shareholders in Japan. Then I'll tick off a some of the obstacles and hint at how to get around them.

It's a paradox that Japanese management should be so powerful compared to shareholders. In fact, Japanese management does have access to legal tools against shareholder challenge that would be available elsewhere. Management cannot place percentage limits on voting power. They can't even, as is possible in some American states, issue shares with inflated voting power to friendly parties. One-share, one-vote has long been the law, and preferred stock generally carries no vote. If nothing else, Japanese experience proves that one-share, one-vote does not guarantee shareholder dominance. Japan may be the most democratic country for shareholders on paper. But there is less shareholder democracy than the rules would suggest, at least partly because of shareholder attitudes.

Why is Japanese management so strong?

The mainstream press in Japan is harshly critical of the docile behavior of established Japanese institutional investors, corporate attitudes toward individual shareholders, and the superficiality of annual general meetings. The Japanese language daily Mainichi Shimbun attacked the bunching of annual meetings on a single day, saying,

"Industry people striving to cover up the stench [of shareholder meetings] face shareholders and citizens unwilling to criticize their attitude. In an environment of such spinelessness on the part of investors, companies won't be able to shed a behavior pattern that has been excusable only in Japan."

Japanese journalists and U.S. trade negotiators have primarily been upset because of management transparency concerns. But there is another concern that bears directly on the issue of fairness to investors.

Prevalence of cross-shareholding is probably the most important characteristic of the Japanese market to remember. This is the subject of Shuzo Nakashima's book. I am glad that Sally has arranged for him to say a few words about that later on. I'll just ask you to bear in mind that the average company in the Mitsubishi group, the largest of Japan's industrial groupings, is 27 percent owned by other Mitsubishi group companies. If you argue, as some do in Japan, that cross holdings do not represent net investment and should not be votable, then management in most of Japan's leading companies, would no longer be able to rely on a majority of loyal shareholders. This could be a key to obtaining greater management responsiveness to those shareholders who are net contributors of capital.

Obstacles

In general: Companies are often frank in their unwillingness to go beyond legal requirements for convenience of proxy voting.

- 14 days advance notice (less first class mail time) of meeting agendas and ballot items is rarely exceeded by more than a few days.
- English-language proxy packets are almost unheard-of, except for the nine Japanese ADRs listed on the New York Stock Exchange.
- Advance notice is so short that it can be difficult even to vote ADR shares.
- With a few exceptions, most local custodian institutions in Japan will not agree to relay votes against management wishes.
- Annual general meetings are overwhelmingly scheduled on a single day in late June (June 28, this year), posing obvious problems for holders of large portfolios.

Mechanics

In one form or another, you need a custodian physically in Japan who knows how you want to vote. The answer may be a traditional custody service that is willing to go along with your wishes, or one of the new international proxy voting services. I suggest you have a look at the Autumn issue of Global Shareholder.

Above all, Canadian institutions interested in exercising proxy rights should not give up hope on this huge market. You probably have constituencies there, maybe including the largest prefectural pension fund, that of Tokyo. A leading member of the Tokyo Assembly appears to be very interested in activating their fund in support of environmental responsibility on the part of companies in which they invest. She has told me she is quite interested in the models of two North American pension funds, those of New York City and of California.

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